

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX.

IN THE

United States Court of Appeals

For the District of Columbia

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

No. 8782.

FILED JAN 19 1945

MAUD DUCKETT

Joseph W. Stewart
22 CLERK
Appellant

vs.

WARD DUCKETT, EDWARD DUCKETT and CLARENCE
DUCKETT,

Appellees.

Appeal from the District Court of the United States for
the District of Columbia Holding a Probate Court.

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THE REPORTER COMPANY, Inc., Walton, N. Y.
1945

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**United States Court of Appeals for the
District of Columbia**

No. 8782

MAUD DUCKETT,	}
Appellant,	
vs.	
WARD DUCKETT, EDWARD DUCKETT and CLARENCE DUCKETT,	}
Appellees.	

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA HOLDING A PROBATE
COURT.

BRIEF FOR APPELLANTS.

JURISDICTIONAL STATEMENT.

Appellant, being the caveatee and defendant below, appeals from a judgment and decree (Appellant's Appendix) for the caveators and plaintiffs below entered by the District Court, on the verdict of a jury (Joint Appendix p. 4) in annulling the will (Joint Appendix pp. 1, 2) of one Mary Frances Diggs, deceased.

The District Court had jurisdiction under Title 19, Sec. 312 (Act of March 3, 1901, 31 Stat. 1213, C. 854, Sec. 140) 1940 Code.

This Court has jurisdiction to review the judgment under Title 17, Sec. 101 (1940 Code, Act of March 3, 1901, 31 Stat. 1225, C. 854, Sec. 226).

The pleading necessary to show the existence of jurisdiction is:

1. The Petition for Caveat.

STATEMENT OF THE CASE.

It appears that the testatrix, Mary Frances Diggs, made and executed her last will and testament on the 25th day of April, 1941, and died on April 26, 1941. It developed that the decedent requested a cousin, one Cecelia Walker, who had attended the decedent's business during her illness, to get in touch with the real estate office of Wilcox and Hane, and have somebody come out and make a will for her. That pursuant to this request, Mrs. Walker called the office of Wilcox and Hane, who recommended to her one Augustus W. Gray, Esquire, a member of the bar of this Court; that as a result thereof Mr. Gray contacted Mrs. Walker, found out the nature of the business, and went by appointment to the home of the decedent; that he was admitted by Mrs. Walker and that he went immediately to the bedroom of the decedent, passing Maud Duckett on the steps as he went up; that he was introduced to Maud Duckett at that time, after which he continued on up, while Maude Duckett went on down; that after the passing of a few pleasantries, the testatrix and the scrivener, Mr. Gray, got down to the business at hand; that the testatrix told Mr. Gray the nature and extent of her property and how she wanted to dispose of same; that he took notes as she talked and after he had

gotten all of the information, he retired from the room and went downstairs and drew the will in accordance with his instructions; that he returned, read the finished draft to the testatrix, and then gave same to the testatrix, who indicated her approval thereof. The will was then formally executed, with the witnesses Gray and Cecelia Walker.

The testimony showed that Maude Duckett had nothing whatever to do with execution of the will or its procurement. It further appeared that Maude Duckett, a trained nurse, was sent for by one of her sisters, who urged her to come; that immediately upon receipt of the information of her sister's illness, she came to Washington and upon the solicitation of her sick sister, the testatrix, she arranged for her release from the hospital to her home where the testatrix wanted to come; that these arrangements were made in the presence of Cecelia Walker and her brother, Ward, the appellant herein; that Ward offered no protest thereto; that Maude Duckett broke up her home in Philadelphia and took charge of the case of her sick sister until her death; there was not even a suggestion of improper influence by any of the testimony.

The testimony showed that the testatrix during her entire stay at the hospital and at home always conversed with and talked to all persons who came to see her. That on the day that she died she received the sacrament from the Catholic priest who had attended her throughout her illness and always found her of sound mind. The evidence disclosed also that Ward Duckett received the accumulated retirement deductions amounting to about \$800. Several neighbors and friends testified that Mrs. Diggs was of sound mind and was always a strong-willed person.

The testimony of the caveators disclosed, and it was contended throughout, that the testatrix had promised to leave her house to her brother, Ward, who had lived with

her for a number of years. There was no claim or suggestion that any of the other heirs at law would have received or expected anything. The testimony of the caveators also showed that Ward saw his sister twice each day.

STATUTES INVOLVED.

1940 D. C. Code

Title 19.—Wills and Administration.

“Sec. 312. Trial of issues as to wills.—Whenever any caveat shall be filed, issues shall be framed under the direction of the Court for trial by jury. * * *”

1940 D. C. Code

Title 17.—Judiciary.

“Sec. 101. Jurisdiction.—Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, may appeal therefrom to the said court of appeals; * * *”

1940 D. C. Code

Title 19.—Wills and Administration.

“Sec. 101. Capacity to make will.—No will, * * * shall be good and effectual for any purpose whatever unless the person making the same be * * * at the time of executing or acknowledging it, of sound and disposing mind and capable of executing a valid deed or contract.”

SUMMARY OF ARGUMENT.

The jury having found the testatrix of sound mind, this appeal perforce poses only one question, namely:

1.

Undue Influence.

Whether the evidence in this case was sufficient to make out a case of undue influence which would invalidate the will. In order to invalidate a will because of undue influence, the testimony as to that must be clear and convincing and not a mere possibility or suspicion of undue influence. The law does not denominate kindness and attention as undue influence. The undue influence which the law condemns is that which destroys the free agency of the testator and which overbears his will by excess importunity, imposition or fraud, to such an extent that the will does not express the testator's wishes but those of the persons exercising the influence.

Even giving the maximum possible weight to the appellants' testimony, it falls far short of the standard set by our cases in this Court and in Federal jurisdictions generally.

ARGUMENT.

I.

Undue Influence.

Was the evidence in this case sufficient to make out a case of undue influence which would invalidate the will?

Counsel for the appellees has relied upon *Hagerty vs. Olmstead*, 39 App. D. C. 170, in support of his contention of undue influence. The *Hagerty* case involved the conduct of a person in a confidential relationship to the testator who procured the scrivener, and generally supervised the execution of the will. A reading of the record

in this case will disclose no such facts as that, and on the contrary all of the evidence shows that the beneficiary in this case had nothing to do with the execution of the will.

Taking all of the facts and circumstances in this case and allowing the appellants the benefit of every doubt, you have at best but a suspicion or a possibility of undue influence.

There is nothing new in this principle of law for as early as 1902, the Supreme Court in the case of *Beyer vs. LeFevre*, 186 U. S. 114; 46 L. ed. 1080, reversing 17 App. D. C. 238, in passing upon this question of undue influence, where the testimony was stronger than in the instant case, said, page 1085 in the L. ed.:

“Whatever rule may obtain elsewhere we wish it distinctly understood to be the rule of the Federal Courts that the will of person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show *only a possibility or suspicion of undue influence*. The *expressed intentions* of the testator *should not* be thwarted without *clear reason therefor*.”

Furthermore, this Court has successively in a series of cases given effect to this rule.

Robinson vs. Duvall, 27 App. D. C. 535, affirmed 207 N. S. 583; 52 L. ed. 351.

Palmer vs. Strohecker, 60 App. D. C. 312, 53 F. (2nd) 924.

Brooke vs. Barnes, 61 App. D. C. 161, 58 F. (2nd) 924.

And finally in a most revealing opinion recently rendered in this Court, where the facts make the instant case seem tame indeed, in the case of *MacMillan vs. Knost*, 75 App. D. C. 261, decided by this Court on March 9, 1942, this Court approved the rule of law as stated by the Trial Justice:

“If the appellant hoped to be, asked to be, and was rewarded for his kindness, it does not follow that he used undue influence. As the Court told the jury, undue influence involves ‘improper means and practices. * * * Influence gained by kindness and affection will not be regarded as “undue,” if no imposition or fraud be practiced, even though it induce the testator to make an unequal disposition of his property in favor of those who have contributed to his comfort, * * * if such disposition is voluntarily made. Confidential relations existing between the testator and beneficiary do not alone furnish any presumption of undue influence. * * * One has the right to influence another to make a will in his favor. He may * * * lay his claims for preferment before the testator. They may be based on kinship or friendship or kindness or service or need or any other sentimental or material consideration. One can use argument and persuasion so long as it is fair and honest and does not go to an oppressive degree where it becomes coercive. * * *’ These instructions state the law of the District of Columbia. Moreover, ‘possibility or suspicion of undue influence is not enough’” (citing *Beyer vs. Le Fevre, supra*, and *Brooke vs. Barnes, supra*).

The Court goes on to state:

“We find no evidence of oppression or coercion. We find no evidence of improper conduct, as we interpret that term. Appellants’ conduct may arouse distaste in reasonable men. Reasonable men, measuring his by their individual standards, may even call it improper. The jury, in effect, have done so. But the evidence would not support a finding that the appellants’ conduct was improper according to commonly accepted standards. That, we think, is the test. In legal theory, the rights of litigants do not turn upon the predilections of a jury, and so upon accidental differences between one jury and another. For example, when negligence is in issue the law undertakes to

measure conduct by the normal standards of normal men—the so-called ‘reasonable men’ or ‘ordinary prudent man’—and not by the higher or lower standards of the men who try the issue. On the same principle, conduct which influences a will is not improper, and the influence is not undue, unless it falls below commonly accepted standards.”

There is not a single shred of evidence anywhere in this case which showed that Maude Duckett, or any other person exerted any improper influence upon the testatrix. Indeed, the appellants insist that the undue influence was exerted only by Maude Duckett. An examination of the testimony of Maude Duckett and the opposing witnesses will disclose that none of it fits the test postulated by this Court in the *MacMillan* and other cases cited *supra*.

It must be remembered, that the appellee’s contention was that Ward should or would have received the entire estate but for the intervention of his sister, the appellant. In this connection it is urged that Ward saw his sister twice each day and he himself testified that no one ever tried to stop him from seeing her. How can it be successfully urged therefore, assuming, but not admitting, that the other heirs at law and next of kin were denied access to the decedent, that this could possibly have affected Ward’s relationship with his sister.

The facts on the contrary show that the decedent was conscious of her responsibility to her brother Ward and advised Mr. Gray, in response to a question about her retirement deductions that she had left that for Ward.

The appellant is mindful of the decision of this Court in this case in *Duckett vs. Duckett*, 77 App. D. C. 303. But a comparison of the record in that case with the record in this will disclose a totally different version of testi-

mony from that relied upon by the appellant in that case. Unfortunately in the earlier case, the testimony was not transcribed. This Court in the earlier case took the appellant's version which was distorted and expanded. In this case we have brought the stenographic transcription. A careful examination of this testimony in light of the facts relied upon by this Court in the earlier case will show no such statement of facts as supposed therein.

The appellant has examined every case decided by this Court on the question of undue influence and feels secure in the belief that under the record as here produced, and in light of the adjudicated decisions the result here is improper.

It necessarily follows that the Court below erred in not directing a verdict in favor of the appellant at the conclusion of all the testimony, and that the Court erred in overruling the motion for judgment now *obstante verdicto*, etc.

CONCLUSION.

It is respectfully urged therefore, that from the record and facts, a case of undue influence and fraud has not been established and that this case should be reversed and remanded.

Respectfully submitted,

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THURMAN L. DODSON,
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Attorneys for Appellant.

JOINT APPENDIX.

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Last Will and Testament of Mary Frances Diggs.

1

[1]

(COPY.)

IN THE NAME OF GOD, AMEN,

I, Mary Frances Diggs, of the City of Washington, District of Columbia, being of sound and disposing mind, memory and understanding, and capable of executing a valid deed or contract, considering the certainty of death and the uncertainty of the time thereof, and being desirous to settle my worldly affairs, and thereby be the better prepared to leave this world when it shall please the Almighty to call me hence, do hereby make, publish and declare this my last Will and Testament, hereby revoking and annulling all wills and testamentary dispositions heretofore made by me, in manner and form following, that is to say: 2

FIRST, and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my executrix hereinafter named; and my will is, that all my just debts and funeral expenses shall be paid by my executrix hereinafter named as soon after my decease as shall be convenient: 3

SECOND, I give, devise and bequeath to my beloved sister, Miss Maud Duckett, in consideration of her kindness, untiring devotion and personal service to me during my illness, when no other relative offered or came to do for me, and without hope of reward, all of my property, real, personal and mixed of whatever description and wherever located; including my home, 314 Kentucky Avenue, Southeast, described as S. Lot 10 Square 1039, in the District of Columbia, together with all of my household effects, furnishings, clothing and cooking utensils; And all sum or sums of money on deposit in the American

4 *Last Will and Testament of Mary Frances Diggs*

Security and Trust Company and any other depository. All monies from any and all Insurances, Societies, and Associations. To her and her heirs forever, in fee simple and unconditionally. In other words I want my sister, Maud Duckett, to have everything I own, or may own at the time of my demise.

MARY F. DIGGS

Cecelia E. Walker
Augustus W. Gray

- 5 [2] All the rest and residue of my estate, both real, personal and mixed, I give, devise and bequeath to my beloved sister, Maud Duckett, to her and her heirs and assigns forever.

AND LASTLY, I do hereby nominate, constitute and appoint my beloved sister, Maud Duckett, executrix of this, my last Will and Testament, and I desire that my executrix hereinbefore named shall not be required to give bond for the faithful duties of that office.

- 3 IN TESTIMONY WHEREOF, I have set my hand and seal to this my last Will and Testament, at Washington, D. C., this 25th day of April, in the year of our Lord, one thousand nine hundred and forty-one.

MARY F. DIGGS (Seal)

SIGNED, SEALED, PUBLISHED and DECLARED, by Mary Frances Diggs, the above named testatrix as and for her last Will and Testament, in our presence, and at her request, and in her presence and in the presence of each other, we have hereunto subscribed our names as attesting witnesses.

Mrs. Cecelia E. Walker
Residence 1319 So. Carolina Ave., S. E.
Augustus W. Gray
Residence 615 F St., N. W.

Order Framing Issues.

7

[CAPTION.]

[8]

Upon consideration of the pleadings herein, it is by the Court, this 17th day of September, 1941, Ordered and adjudged, that the following issues be and they are hereby framed to be tried before a jury in the District Court of the United States for the District of Columbia, on the 3rd day of November, 1941.

1. Was the paper writing bearing date on the 25th day of April, 1941, and filed herein, the last will and testament of decedent herein? 8
2. Was decedent herein, at the time of the making and subscribing or of the acknowledging by her of the said paper writing, of sound mind and memory and capable of executing a valid deed or contract?
3. Was said paper writing attested and subscribed in the presence of said testatrix by two credible witnesses?
4. Did the attesting witnesses to said alleged will or did either of them sign his or her name as a witness to the said alleged will at the request of the said testatrix? 9
5. Was the said paper writing, purporting to be such last will and testament, obtained and the execution thereof procured by fraud, coercion, misrepresentations, undue influence and pretension exercised upon her by one Maud Duckett, the party named as executrix in said paper writing?
6. Was the said paper writing freely and voluntarily executed or made as decedent's last will and testament by said decedent?
7. Was the subscription to said paper writing and the publication thereof by her procured by fraud, co-

10

Verdict Setting Aside Will

ercion, misrepresentation, undue influence, and pretension, exercised upon her by the said Maud Duckett or some other person or persons unknown to the subscribers?

BY THE COURT:
JENNINGS BAILEY,
Justice.

Consent:

AUGUSTUS W. GRAY,
Attorney for Caveatee.

11

Verdict Setting Aside Will.

[10]

[CAPTION.]

Now come here again the parties aforesaid in manner aforesaid, and the same jury that was respited yesterday: Whereupon the jury after the case is given them in charge, upon their oath say:

1. Was the paper writing bearing date of 25th day of April, 1941, and filed herein, the last will and testament of the decedent herein? No.

12

2. Was the decedent herein, at the time of mailing and subscribing or of the acknowledging by her of the said paper writing, of sound mind and capable of executing a valid deed, or contract? Yes.

7. Was the subscription to said paper writing and the publication thereof by her procured by fraud, coercion, misrepresentation, undue influence and pretension, exercised by the said Maud Duckett or some other person or persons unknown to the subscribers? Yes.

HENRY C. VADEN
Foreman's Signature.

Motion for Judgment *Non Obstante Verdicto* or in the Alternative for a New Trial. 13

[CAPTION.]

[11]

Comes now the caveatee, by her attorneys, and moves the Court to grant her a judgment *non obstante verdicto* or in the alternative to grant her a new trial and for reasons therefor states:

1. That the verdict of the jury was contrary to the evidence and to the weight of the evidence.

2. That the verdict of the jury was contrary to law. 14

3. That the Court erred in not directing the verdict in favor of the caveatee at the conclusion of the caveator's case.

4. That the Court erred in not directing a verdict in favor of the caveatee at the conclusion of all the testimony.

5. That the Court erred in submitting to the jury the question of undue influence under the testimony in this case.

6. And for other reasons to be urged at the hearing of this motion. 15

AUGUSTUS W. GRAY
THURMAN L. DODSON.

16 **Decree Denying Probate of Alleged Will.**

[CAPTION.]

[13] *Decree Denying Probate of Alleged Will.*

17 Upon motion of counsel for the caveators in the above entitled cause, and upon consideration of the prior proceedings herein, it appearing to the Court that by the verdict of the jury empaneled to try the issues framed herein the paper writing dated the 25th day of April, 1941, filed in this Court, purporting to be the last will and testament of Mary Frances Diggs, deceased, was not the last will and testament of said decedent because of fraud and undue influence exercised upon said Mary Frances Diggs, it is this 16th day of February, 1944,

ADJUDGED, ORDERED, AND DECREED, that the said paper writing, dated the 25th day of April, 1941, is denied probate and record as a will of the said Mary Frances Diggs, deceased.

JAS. W. MORRIS
Justice.

18 **Order Overruling Motion for Judgment *Non Obstante*,
etc.**

[CAPTION.]

[14] *Order Overruling Motion for Judgment Non Obstante,
etc.*

Upon consideration of the motion of the caveatee filed herein on the 27th day of January, 1944, and the opposition thereto, and after argument of counsel for both the caveatee and the caveators, it is this 17 day of February, 1944,

ADJUDGED, ORDERED and DECREED, that said motion be and the same is hereby denied.

JAS. W. MORRIS
Justice.

Assignment of Errors.

19

[CAPTION.]

[305]

Assignment of Errors.

COMES now the caveatee and makes the following assignment of errors:

1. That the Court erred in refusing to grant a motion for a directed verdict on the issue of undue influence at the conclusion of the caveator's case.

2. The Court erred in refusing to direct a verdict for the caveatee at the conclusion of all the testimony.

20

3. The Court erred in refusing to grant the caveatee's motion for a new trial or for a judgment *non obstante verdicto*.

4. The Court erred in construing the opinion in Duckett vs. Duckett, App. D. C. .

5. The Court erred in its rulings upon the admission and exclusion of evidence, which rulings were duly excepted to at the trial.

6. The Court erred in its instructions to the jury, which instructions were duly excepted to at the trial.

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AUGUSTUS W. GRAY
THURMAN L. DODSON
Attorneys for Caveatee

22

Excerpts From Transcript of Testimony.[30] *Evidence on Behalf of the Caveatee.*

Thereupon AUGUSTUS W. GRAY was called as a witness for and on behalf of the caveatee and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. Will you state your full name? A. Augustus W. Gray.

23 Q. What is your occupation, Mr. Gray? A. Lawyer.

Q. How long have you been a member of this bar? A. Forty years.

Q. Were you a member of the bar in April, 1941? A. I was.

Q. Were you practicing in the City of Washington? A. I was.

Q. On or about the 25th of April, 1941, did you receive a call from the firm of Wilcox and Hane? A. I did.

Q. As a result of that telephone call, what did you do? A. I called up a Mrs. Walker. Mr. Wilcox said that a call had come into his office and they wanted some legal work done, that they didn't do any legal work and he
24 wanted me to get in contact with Mrs. Walker, which I did.

Q. As a result of talking to Mrs. Walker, what did you do? A. I went to see Mrs. Diggs on Kentucky Avenue.

[31] Q. Prior to this particular day did you know Mrs. Cecilia Walker? A. I did not.

Q. Did you know Mrs. Mary Frances Diggs? A. No.

Q. Did you know Miss Maude Duckett? A. No.

Q. When you got to 314 Kentucky Avenue whom did you talk to? A. Mrs. Walker.

Q. What happened at that time? A. She told me to go upstairs.

Q. As you went upstairs did you meet anyone? A. I met Miss Duckett coming downstairs.

Q. How was she dressed? A. In a nurse's uniform.

Q. Did you say anything to Miss Duckett at that time?

A. No, Mrs. Walker introduced Miss Duckett to me and I continued on to the sick room—the bedroom.

Q. When you got to the room whom did you find there?

A. I found Mrs. Diggs in bed.

Q. How was she in bed, lying prone or propped up?

A. No, she was lying there like a sick person would.

Q. Will you tell us then what happened from then on?

Did you have any preliminary conversation with her before you went into the— A. I noticed that candles were burning and that indicated to me that she was a Catholic, so I told her that I had been christened in the Catholic Church myself but I was not a Catholic, I was a shouting Methodist. [32] She smiled and said to me, "Never mind, the mark is still on you. You are still a Catholic." Then I went into a conversation with her as to what she wanted, what she had, and so on.

26

Q. Did she tell you what she wanted done? A. She said she wanted me to draw a will for her. I asked her what she had to will and whom she wanted to will it to.

Q. What did she tell you she had? A. She said she owned the house that she was living in, that she had a small mortgage on it but she wanted the house to go to her sister, Maude, who had come down from Philadelphia and who had waited on her, so much so that she wouldn't even sleep, she was at her every beck and call. I asked her what else did she have beside the house. She said she had been a government employee. She said she had a retirement fund but she had disposed of it because she had left it to her brother, Ward, so I didn't bother with that. So, after I had finished taking the notes I asked her was there anything else that she could think of that she had that she wanted to dispose of. She said, "No, but does this give Maude all that I have except the retirement?" I said, "Yes, it does." She said, "That is what I want."

27

Q. After you had taken the notes, what did you then do? A. I went downstairs to the dining room and drew a will. I had the papers with me and I understood what they wanted was a will.

Q. And after you had drawn the will what then did you do with it? A. I went back to her room and I read it to her.

[33] Q. Before we get to that, during the time she was telling you about her property and how she wanted it disposed of, who was in the room with you? A. No one.

29 Q. Just you and the testatrix? A. That is all.

Q. When you got back there were you still alone with her? A. Yes.

Q. What happened when you got back with the will? A. I read the will to her and then gave it to her to read. And she read it. She said, "Now, this is what I want."

Q. What happened after that? A. I told her we would have to have two witnesses and she said, "Well, call Mrs. Walker. She can be one, can't she?" I said, "Yes," and I said, "I can be a witness. That will be all that will be necessary." So, Mrs. Walker came up and Mrs. Diggs said that this was her will and she wanted us to witness it for her.

30 Q. Did she then sign the will? A. Yes.

Q. And did the witnesses sign it in her presence? A. Yes, all three of us were in the bedroom together.

Q. I show you this and ask you if that is the document that Mrs. Diggs executed that day (handing paper to the witness)? A. This is it.

Q. Now, as a result of your observations of Mrs. Diggs that day and your conversations with her, both during the time that you were taking your notes preliminary to writing the will and after you returned to the bedroom after having written the will, was there anything in any of those things to cause you to question her mental capacity for making a will? [34] A. Not the slightest.

Caveatee's Witness, Cecilia E. Walker, Direct

31

Q. What would you say your opinion was as to her mental capacity at that time with reference to making a will or a valid contract? A. I thought she was fully capable of doing this. She was a little weak. She was sick all right, but her mind seemed to me to be all right—clear.

Q. Were you conscious of any influence being exercised over her at the time you were there by anybody? A. There wasn't any.

Mr. Dodson: I think you may inquire, Mr. Murphy.

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[35] Thereupon CECILIA E. WALKER was called as a witness for and on behalf of the caveatee and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. Will you state to the Court and the jury your full name? A. Cecilia E. Walker.

Q. Where do you live? A. 1319 South Carolina Avenue, Southeast.

33

Q. During her lifetime did you know one Mrs. Mary Frances Diggs? A. I did.

Q. Were you in any way related to her? A. Yes, I was related to her.

Q. What was that relationship? A. Cousin—a second cousin.

Q. Did there come a time on or about the 25th of April, 1941, when you had occasion to call the office of Wilcox and Hane? A. Yes.

Q. And as a result of that telephone call did you later on receive a call from Mr. Gray? A. Yes, I contacted Mr. Gray through that call I made.

34

Caveatee's Witness, Cecilia E. Walker, Direct

Q. Did there come a time later on that day that you saw Mr. Gray? A. Yes, I did.

[36] Q. Where did you see him? A. At the residence of the deceased.

Q. Did you admit him there at the house? A. I did.

Q. Where did you carry him after you had admitted him to the home? A. I carried him to the room of Mrs. Diggs.

Q. On the way up did you pass anybody at all? A. No, I didn't.

35

Q. Up to the room? A. No, I didn't.

Q. Did you finally carry him to the bedroom of Mrs. Diggs? A. I did.

Q. What did you do then? A. I introduced him to Mrs. Diggs.

Q. What did you do? A. What did I do?

Q. Yes, after you introduced him to Mrs. Diggs? A. I just stayed there.

Q. What happened then? A. Why, she went on to tell him why she had sent for him.

Q. What did Mr. Gray do? A. Well, after she told him what she wanted, why, of course, he made this will, I suppose you would call it, and then I was a witness to it.

36

Q. Do you know whether Mr. Gray wrote the will in the bedroom or some other part of the house? [37] A. In the bedroom. She dictated to him what she wanted in there.

Q. When the will was finally written, what happened to it then after it was written? A. Why, of course, he read it to her and it was agreeable with her, what she wanted, and then, as I say, I put my signature—he put his and I put mine.

Q. Did Mrs. Diggs sign this in your presence? A. Yes, she did.

Q. Is that your signature there (handing paper to the witness)? A. That is right.

Q. And did Mr. Gray sign after you? A. That is right.

Q. Where was Maude Duckett while this will was being drafted? A. I don't just know.

Q. Was she in the bedroom? A. No, she wasn't in the bedroom.

Q. At whose suggestion did you call the office of Wilcox and Hane? A. Mrs. Diggs asked me to call there.

Q. Did Miss Duckett ever ask you to call there? A. No, sir.

Q. Did Miss Duckett ever ask you to send for Mr. Gray with reference to this will? A. No, not at all.

38

Q. How long have you known Mary Frances Diggs? A. I have known her all my life.

[38] Q. How long had she been sick at this time? A. Oh, I judge about—she was taken sick—I cannot just remember the date but it was in April.

Q. Of the very month she died? A. Well, I don't know whether it was the latter part of March, but I know it run into April.

Q. Prior to her being at home, was she at any other place while she was ill? A. Yes, she was in the hospital.

Q. While she was in the hospital, did you have occasion to visit her there? A. Yes, I did.

Q. From your various conversations and contacts with Mrs. Diggs, were you able to have an opinion as to her mental condition during the time of her illness? A. Yes, I think so.

39

Q. What, in your opinion, was her mental condition? A. It was perfectly normal.

Q. Was there anything different in her mind during that time than there was prior to her illness? A. Not at all.

Q. What kind of a person was she, as far as her will power and determination was concerned? A. She was very set in her ways. I could say that.

Q. Did that characteristic remain with her throughout her illness? A. Yes, it did.

40

Caveatee's Witness, Cecilia E. Walker, Cross

Q. After she came home, how often did you see her?

A. Well, most every day.

[39] Q. How far did you live from Mrs. Diggs? A. Just right around the corner.

Q. Who used to attend to her business? A. She asked me to do that for her. We were not only cousins, but she seemed to like me very much and she confided in me.

Q. And you paid her notes and that sort of thing with her money, of course? A. Yes, I did.

41

Q. Directing your attention specifically to the 25th day of April, 1941, what, in your opinion, was her mental condition on that day? A. It was just the same as it had been.

Q. Were you conscious during the time you were in the house of any undue influence or fraud being exerted upon Mrs. Diggs by Maude Duckett or anybody else? A. I can honestly say absolutely not.

Q. In your opinion, was this will freely and voluntarily executed? A. It certainly was.

Mr. Dodson: You may inquire.

Cross Examination by Mr. Murphy:

42

Q. Just how far is your home from where Mrs. Diggs lived? A. Well, I should say about a block and a half. I am on South Carolina between 13th and Kentucky Avenue, and she is on Kentucky Avenue between C and D. That is two blocks and a half, isn't it? [40] Well, I am between South Carolina and C, and she is C and D, so I should call that about a block and a half.

Q. When you called Mr. Wilcox's office, did Mrs. Diggs have a telephone in her home? A. Yes, sir.

Q. At 314 Kentucky Avenue? A. Yes, she did.

Q. Did you use that telephone to call Mr. Wilcox's office? A. No, I didn't.

Q. Where did you call Mr. Wilcox? A. From my 'phone at my house.

Q. Were you around at 314 Kentucky Avenue that morning? A. Yes, that morning and that afternoon, but late.

Q. That morning, what time were you there? A. Oh, I don't know just about what time. I would say—are you speaking of the morning?

Q. I am speaking of the morning of the 25th, the day the will was drawn. A. I was around there before noon.

Q. Before noon? A. Before noon.

Q. Did you see Maude that morning? A. Yes, sir; I did.

44

Q. Did you see anyone else around there that morning? A. I don't recall that particular morning whether—I don't know whether her sister-in-law, Mrs. Janie Duckett, was there or not. I know she came around at different times during Mrs. Diggs' illness.

[41] Q. Were you ever at 314 Kentucky Avenue and saw Maude Duckett alone there—was she ever alone there with Mrs. Diggs? A. Yes, she was.

Q. On the morning of the 25th was she alone? A. I am not sure, but Mrs. Janie Duckett was there. I think she was sitting in the dining room when I went in.

45

Q. On this particular morning did you and Maude have any conversation at all? A. No, we didn't.

Q. What did you do when you were around there? You say you were around there before noon. A. I went up there every day to see Mrs. Diggs.

Q. Did you have any conversation with Maude at all that morning? A. Not particularly, just to speak to her.

Q. How long have you known Maude? A. I have known her a good while. She is my cousin, too.

Q. About how long would you say? A. Oh, I guess 20 or 30 years, something like that.

46

Caveatee's Witness, Cecilia E. Walker, Cross

Q. Coming back to this morning of the 25th, when you went around there, didn't you talk to Maude at all that morning? A. I spoke to her, but we didn't have any general conversation.

Q. No general conversation? A. No.

Q. You spoke to her and then you went upstairs to see Mrs. Diggs? A. Yes, I always did.

47

Q. Had Mrs. Diggs said anything to you prior to this occasion [42], that is the 25th of April, about wanting to draw a will? A. Yes, on the 24th, I think she told me to get in touch with Mr. Wilcox. I think that is right—two days before she died. That is the time she asked me to get in touch with Mr. Wilcox. It was late that afternoon and the office of Mr. Wilcox was closed. She told me I could call in the morning. So I called the next morning. I got in touch with Mr. Wilcox and told him what she wanted. Of course, he said he was not—

Q. Never mind what he said. You say you called him the next morning, that is the morning of the 25th? A. Yes, that would be the 25th.

48

Q. That is after you had been around to Mrs. Diggs' home? A. No. I told you that the evening before I called. She asked me to call Mr. Wilcox's office the next morning. It was too late when I got home, so she asked me to call him the next morning and I did call him the next morning.

Q. When did you call, after you had gone around to Mrs. Diggs' home or before you left your home? A. Oh, I called before I left my home. I had to call so as to tell her just what—the information I got from Mr. Wilcox. After calling Mr. Wilcox that morning, then I went around there.

Q. You said you went around to Mrs. Diggs' home that morning early. What time did you go around to her home? A. I said sometime before noon.

Q. What time did you go around there? A. Between

9 and 12. I don't know just what hour, but it was some-time that morning.

Q. Isn't it a fact you were around there that morning at 8 o'clock, on the morning of the 25th? [43] A. At 8 o'clock?

Q. At 8 o'clock, around at Mrs. Diggs' home? A. No.

Q. You didn't stay there from 8 until 9 that morning? A. No, because I didn't make the call at Mr. Wilcox's office until around about 9 o'clock. I guess that is the time the office usually opens, around about 9 o'clock. I didn't go until after I had made the call, so it couldn't have been 8 o'clock. 50

Q. You say that you were in the room—that you met Mr. Gray and went on up to Mrs. Diggs' room. Were you in the room with Mr. Gray when Mrs. Diggs told him she wanted him to draw a will? A. Yes, I was.

Q. Did you remain in there the whole time? A. Yes, I did.

Q. Did Mr. Gray draw the will right there in the room? A. Yes, sir, I did.

Q. You didn't call Mr. Wilcox's office then from Mrs. Diggs' home? A. Not, it was from my home.

Q. It was from your home? A. Yes.

Q. You hadn't been to Mrs. Diggs' that morning and left there and went around the corner to your home to call? A. No, no. No, because as I said, I had seen her the previous evening and she asked me to do that the next morning. 51

Q. Did Maude accompany you and Mr. Gray into Mrs. Diggs' room that morning when he went up to draw a will? [44] A. No, she didn't. She certainly did not.

Mr. Murphy: That is all.

Mr. Dodson: That is all.

(The witness left the stand.)

Mr. Dodson: At this time, if your Honor please, I wish to offer the will in evidence.

52

Caveator's Witness, Ward C. Duckett, Direct

Mr. Murphy: No objection.

The Court: The will is admitted.

(Document described as Last Will and Testament of Mary Frances Diggs was thereupon marked Caveatees' Exhibit i and received in evidence.)

Evidence on Behalf of The Caveator.

53

Thereupon WARD C. DUCKETT was called as a witness on behalf of the caveator and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

Q. Ward, will you give us your full name? A. Ward Custis Duckett.

Q. Where do you live? A. I live now at 603 Second Street, Northeast.

Q. Where did you live on April 25, 1941? A. 314 Kentucky Avenue, Southeast.

Q. Is that the home of your sister, Mrs. Diggs? A. It is.

54

Q. How long had you lived there with her? A. 36 years.

Q. Were you married or single? [45] A. I was not married when I was living with her.

Q. Are you married now? A. I am married now but I was not married when I was living with her.

Q. Directing your attention to the time your sister was taken to Gallinger Hospital, did you go to see her at the hospital? A. I did.

Q. What was her condition when you saw her? A. She was pretty weak. I was with her when she was carried there and I went there on the visiting days during the week. She seemed to be pretty good the first week she was there but the second week she began to get

weak. She didn't seem to have much to say. She talked but very little after the second week.

Q. How long was she in Gallinger Hospital? A. Two weeks.

Q. How many visiting days do they have a week there? A. Wednesday and Friday.

Q. Did you go to see her on both of those days? A. On both of those days.

Q. Were you able to talk to her at that time, to carry on any conversation with her? A. I just went to the hospital to see her. She would just shake her head and say, "Duck, I don't feel very good."

56

Q. Was she able to carry on a conversation with you? A. No, only she would tell me how she was feeling.

Q. Would you say she was capable at that time of taking care of her own business affairs? [46] A. No, I don't think she was.

Q. Would you say she was of sound mind, capable of executing a valid deed or contract? A. No, she was not.

Q. She was later brought home from Gallinger Hospital. Do you know how she was taken away or who arranged to have her taken away from Gallinger Hospital? A. My sister, Maude Duckett, as she calls herself, and Mrs. Cecilia Walker.

57

Q. Did Mary ever say anything to you about she wanted to leave the hospital? A. No, she didn't. She said she would like to be home. She wanted to know how the home was getting along, but the doctor said she was in no condition to go home.

Mr. Dodson: I object to what the doctor said.

The Court: Yes, it may be stricken. The jury will disregard that. That is hearsay.

By Mr. Dodson:

Q. Don't tell us what she did say? A. She didn't say she wanted to come home to me.

58

Caveator's Witness, Ward C. Duckett, Direct

Q. Well, she did come home anyway? A. Yes.

Q. After she came home who took charge of her? A. Maude did. Maude was the one who brought her home.

Q. Were you permitted to see her? A. She couldn't keep me from seeing her.

Q. You did go in to see her? A. Yes, I went in there several times and asked her how she felt. [47] She just shook her head. She always called me Duck. She said, "Duck, I don't feel so hot."

59

Q. Did Maude ever try to stop you from seeing her? A. No. Maude told me to go in there and see her. She couldn't keep me from going, because her room was right next to mine, all I had to do was look in the door. So, of course, Maude didn't stop me, but she stopped others that didn't live there.

Q. Did you ever hear her stop anybody else? A. Oh, yes, she stopped several I know, from going in there, even her own brother from Maryland.

Q. Any others? A. Several others. She told them it was against the doctor's orders for her to allow people to go in there and she would lose her license as a nurse if she did.

60

Q. Did you hear that? A. I heard Maude tell them that.

Q. You heard Maude tell her brother and some other people, you say? A. Yes, several times.

Q. That the doctor had said she would lose her license if she permitted them to go in to see Mary? A. She didn't say the doctor would lose it, she said she would lose it if she allowed people to go in to see her.

Q. She would lose her license if she allowed people to go in to see her? A. Yes.

Q. Did Mary ever say anything to you about she wanted you to have her property when she died if you maintained your home with her? [48] A. Yes. Several years ago when Maude was trying to get my uncle's place.

Q. Never mind about that. Just tell us about this case. A. She said to me, "Duck, you have remained with me ever since my husband died. All the rest of them have drifted away and got their own home and you still stay by me. I don't have to want for anything. Anything I want done or to go anywhere, all I have to do is to say I want something done and it is done." She said, "If anything happens to me I want you to have this place. This is your home and I want you to have it."

Q. How recent was that up to the time that she died on April 26th—just how recent before that date had she made such statements to you? A. About a week before she got sick. I used to bring her up and down from the place where she worked, on Saturday nights and also sometime during the week, I used to bring her home. I didn't know she was sick at that time. I brought her home and she had some packages in the car. I brought them in. That is the time she told me that. She said, "If anything happens to me I want you to have this home." She said, "You have been with me ever since George died." That was her husband. So I told her I would do the best I could.

62

Q. When did your sister died? A. The 26th of April, on Saturday night.

63

Mr. Murphy: I will offer the death certificate in evidence, your Honor, for the purpose of showing the time, place and cause of death.

The Court: Let me see it.

Mr. Murphy: Yes, your Honor (handing paper to the Court).

[49] The Court: Come to the bench a minute, please. Step down, Witness.

64

Caveator's Witness, Ward C. Duckett, Direct

(Counsel for both sides approach the bench and conferred with the Court in a low tone of voice, as follows):

Mr. Dodson: I will object to this, if your Honor please. In the first place, as to the cause of death—as to the time of death, that has been already testified to, and the place has been testified to. Now, he wants to get in by indirection what he cannot do directly. You could not have the doctor testify as to the cause of death.

65

The Court: Why not?

Mr. Dodson: Because of the confidential relationship with the patient in this case.

The Court: Oh, you can testify to what the cause of death is in a will case.

Mr. Murphy: Time, place and cause.

Mr. Dodson: Will your Honor allow me an exception?

The Court: Yes.

Mr. Murphy: I offer the death certificate in evidence at this time, your Honor.

The Court: It may be received.

66

(Document described as death certificate was not marked as an exhibit, but was received in evidence.)

(At the conclusion of the foregoing conference, counsel returned to the trial table and the trial proceeded as follows):

Mr. Murphy: Ladies and gentlemen, this is a death certificate of Mary Frances Diggs who died on April 26, 1941, at 314 Kentucky Avenue, [50] Southeast, the cause of death being pulmonary tuberculosis, myocarditis, and due to exhaustion. Signed by Dr. Butz.

By Mr. Murphy:

Q. How friendly were Cecilia Walker and Maude, your sister Maude? A. They were just as close together as two peas in one hull. You know close two peas is in one hull. That is how close they were.

Q. Did Cecilia Walker visit there very much at the house? A. Every day.

Q. Did she go up and see your sister Mary every day? A. She was supposed to help Maude out when she was brought there.

Q. Who else was staying there at the house? A. My oldest brother's wife was there, Janie Duckett. 68

Q. You say your brother's wife? A. Yes, sir.

Q. In other words, your sister-in-law? A. Yes, sir.

Q. Did she stay at the house very often? A. She was there every day up until night. Then she would send her daughter there.

Q. This was all during the time that Mary was brought home from the hospital? A. Yes. My sister-in-law was there before she even went to the hospital and at the time she was in the hospital, she still stayed around there.

Q. What was she doing there, Janie Duckett? A. Cleaning up and cooking and seeing that the house was kept clean. 69

[51] Q. What did Maude do? A. Maude didn't do anything only stay upstairs, read books and look after Mary if she needed any medicine, or give her something to eat.

Q. Was anybody else there? A. My oldest sister was there first.

Q. Which one was that? A. Mrs. Stewart from Anacostia. She was there but she didn't stay.

Q. Did you ever hear Maude tell any of these people that came there to the house that they couldn't see Mary and if they did see Mary that she, Maude, would lose her license as a registered nurse?

70

Caveator's Witness, Ward C. Duckett, Direct

Mr. Dodson: He has asked that question three times.

The Court: Hasn't this witness testified to that?

Mr. Murphy: I think in substance he has. I will withdraw the question.

The Court: Even in those words I thought he had.

Mr. Murphy: I will withdraw the question, your Honor.

71

The Court: I don't know that he said it to this particular person you have just mentioned, but he said it with respect to some of them.

Mr. Murphy: He said it with respect to his brother. I was just referring to others.

The Court: Well, you may ask it. I don't want to shut you off. The last question was addressed generally to everybody, I understood. Perhaps I misunderstood the question.

Mr. Murphy: He had spoken about his brother. Then I asked him if he had heard Maude make that statement to others.

[52] The Court: If you want to identify those last people by name, I don't think I would preclude you from asking it.

72

By Mr. Murphy:

Q. Ward, did you hear Maude tell any other persons that they couldn't see Mary? A. I did. My brother was one, and this lady who lived next door on C Street, named Mrs. Thomas, was the other one.

Q. Thomas? A. Thomas.

Q. Anybody else? A. I don't remember anybody else, because there were quite a few of them there, but I didn't hear her tell the rest of them. I would be out doors or maybe in another room.

Q. All right, when you were there? A. When I was there I only heard her tell two of them.

Q. What did she say? A. She said, "You-all cannot go up to see Mary because I would lose my license if I let you people go up there to see her." She said, "That is the orders I got from the hospital."

Q. She said that is the orders she got from the hospital? A. She said that was the order she got from the hospital.

Q. Did she ever say anything about the doctor saying she would lose her license if she permitted them to see her? A. If she did, I didn't hear it. 74

Mr. Murphy: All right, that is all.

Cross Examination by Mr. Dodson:

[53]. Q. Mr. Duckett, you said you had lived with your sister for 36 years? A. I did.

Q. That was during the time her husband was alive? A. Yes.

Q. When did Mr. Diggs die? A. Well, I just don't remember what time he died. It has been quite a while.

Q. Has he been dead as much as ten years? A. Oh, longer than that. Over ten years. 75

Q. Were you living with her prior to the death of her husband? A. Do you mean was I living with her—

Q. At the time her husband was living. A. Yes, I was living with them long before they moved in that house.

Q. When Mr. and Mrs. Diggs moved in there, you moved in there with them? A. Yes, we all went together.

Q. After Mr. Diggs died you continued to live there? A. I did.

Q. Now, you paid your room rent and board, didn't you? A. Well, I didn't pay no board or rent because we shared it. Just like man and wife. When she wanted anything I would go and get it, or if she wanted anything

she would go and get it. We both shared right along together. We didn't have no separate agreement.

Q. As a matter of fact, Mr. Duckett, you paid \$5 a week? A. I just said I didn't have no separate bill because we shared, just the same as man and wife.

[54] Q. Didn't you pay \$5 a week? A. I didn't have no such payment. She didn't charge me no board. She only said to me, "My husband is gone," and I and her will share right along together.

77 Q. Well, what did your share amount to? Take over the year she died—say, in January of that year—what did your share amount to? What did you pay for your share? A. I didn't count it up. I didn't figure it up to see how much it would be, because to be frank with you, if she needed anything or wanted me to get anything I didn't figure on what it cost. If I had the money I would go and get it.

Q. What day of the week was payday? A. I was working for the Tree Department.

Q. What was your payday? A. Sometimes they would pay once a month.

78 Q. Once a month for the District of Columbia? A. When I was working for the Tree Department they paid off once a month at first, on the 15th of the month, they used to pay me at the District Building.

Q. Were you working for the Tree Department in the spring of 1941? And getting paid once a month? A. Oh, no. In 1941 I was not with the Tree Department.

Q. That is when we were talking about. A. Oh, excuse me. I was working for the street cleaning department in 1941.

Q. You got paid when? A. Every two weeks.

Q. On your payday how much would you give your sister? A. She didn't ask me to give her no certain amount. When I [55] got paid she would say, "Duck, I want so-and-so in the house," and I would go and get

whatever it was. She didn't say, "Give me \$15 or give me \$20." She never said that because we had been there too long together and I had been sharing along with her.

Q. Can you tell us what your share would amount to, say, in a period of a month? A. I didn't keep any count of it.

Q. Would it be as much as \$20 a month? A. Sometimes it may have been more. It just depended on what I bought.

Q. It may have been less? A. It may have been less. I didn't keep any account of it. I didn't take no book and figure to know and say what I was paying in or anything else. We were living there the same as sister and brother should live. 80

Q. Did you ever pay the house note? A. I did not go to the office and pay it. She had got money from me to go down and pay it.

Q. Did you ever pay for the groceries for any particular week? A. I have paid that.

Q. In other words, your arrangement was very indefinite with her? A. Well, how do you mean?

The Court: It was not certain. No certain amount.

The Witness: No, because she hadn't started with me in that way when I first came to live with her. 81

By Mr. Dodson:

[56]Q. Your sister was sick for a while in the house before she was taken to the hospital? A. One week.

Q. When she got sick who looked after her business? A. She told Mrs. Walker to look after her business, as she had taken so much of a liking to her and interest in her.

Q. She was the one she turned to to look after her business when she got sick? A. Yes.

82

Caveator's Witness, Ward C. Duckett, Cross

Q. She got her check cashed and paid her note, the note for the house? A. She did.

Q. After she was sick for a week she was carried to Gallinger Hospital? A. Yes.

Q. She stayed down there for how long? A. Two weeks.

Q. After she got in the hospital didn't you pay Mrs. Walker the amount that was due from yourself? A. I went to the hospital before I got paid and asked Mary should I give Cecilia money to get grub with and she said, "Yes, give her \$10."

83

Q. And that is what you gave her every two weeks as long as she was sick? A. Yes, she said, "Give Cecilia the money for the food because she cannot buy like you and I can."

Q. That was how you paid all the time she was sick, at the rate of \$20, per month, wasn't it? A. Every two weeks.

Q. \$10? [57] A. Yes.

Q. Now, you deny that was the same as you had been giving your sister prior to that? A. I still say we didn't have no agreement about no certain amount.

84

Q. Now— A. Of course, when she got sick it was altogether different.

Q. You said you used to visit at Gallinger Hospital every visiting night when your sister was there? A. Wednesday and Friday.

Q. Your sister was very dissatisfied with the hospital, wasn't she? A. Well, she wanted to go there because the doctor ordered her there. After she got there she got dissatisfied like a person does that has never been to the hospital.

Q. On several occasions you found her in tears when you went there, crying to come home? A. I don't know about coming home, but she was crying when she went there. I couldn't say it was crying to come home.

Q. Didn't she say she wanted to go home? A. She never told me she wanted to go home. She asked me how the home was getting along.

Q. She was always asking you about that? A. And how I was getting along.

Q. She wanted to know whether Mrs. Walker was attending to the business properly? A. No, she would have to tell Mrs. Walker about that because I didn't attend to her business.

[58] Q. She never had any difficulty in recognizing you? She always knew you? A. By my voice. The last week I was there I told her who I was.

86

Q. Were her eyes bad? A. She couldn't see.

Q. She didn't have glasses? A. If she had glasses she couldn't see, because she was absolutely blind.

Q. Now you deny then, that she was ever crying to come home when you got the hospital? A. I don't know whether she wanted to come home, or not.

Q. Did you ever find her in those crying spells frequently? A. I used to see her wiping her eyes. She didn't tell me she wanted to come home.

Q. Now, on the very day the arrangements were being made to bring her home you were present there weren't you? A. At the hospital?

87

Q. Yes. When your sister went there, Maude Duckett, and Cecilia Walker, you went along with them? A. Yes, I took them down to the hospital.

Q. That is right. And you went into the sick room with them that night to see your sister? A. I went as far as the door.

Q. Didn't you see her crying that night? A. I couldn't tell you whether I did or not because she always had tears in her eyes.

Q. Did she? [59] A. She always had, every time I went there because she was sorry she was in there.

Q. She wanted to come home? A. Every time she

88

Caveator's Witness, Ward C. Duckett, Cross

would see me or any of her friends she knew, she would cry.

Q. Didn't she ever tell you she wanted to spend her last days at home? A. No.

Q. She never told you that? A. No.

Q. When Miss Duckett, your sister, was talking to the doctor, you were present, weren't you? A. Standing in the hall.

Q. Right by them? A. Yes.

89 Q. You heard the arrangements being made to bring your sister home? A. I heard what the doctor said.

Q. Did you at that time interpose any objection at all? A. I didn't have anything to say.

Q. You never objected at all? A. I didn't say anything.

Q. After she got home, didn't your sister's attitude change? I mean your sick sister. Did she seem happier at home? A. Do you mean—

Q. Mary Frances Diggs. A. Well, when she got in the house she said, "I am glad to be here," but she still shook her head. She said, "I am glad to be here," but she shook her head like that (indicating).

90 [63] Q. After the death of your sister you received her retirement money, didn't you?

Mr. Murphy: I object to that. That hasn't anything to do with this case whatever. I have sat idly by and permitted Mr. Dodson to go at some length into this question and I didn't object, but when he brings in that question, I don't see what materiality it has.

The Court: Will you approach the bench, please? (Counsel for both sides approach the bench and conferred with the Court in low tone of voice as follows):

The Court: He was the beneficiary designated in the retirement?

Mr. Murphy: Years ago.

Mr. Dodson: That was the testimony of Mr. Gray, that she said he was to get it. I am trying to show in this case that she did know the natural object of her bounty.

[64] The Court: Does the will say anything about it?

Mr. Dodson: No, but he got \$800.00 and I think it is proper to go into this.

Mr. Murphy: The only testimony is that Mr. Gray said when she was drawing the will she told him she had left her retirement money to her brother or made him the beneficiary some twenty years ago. 92

The Court: I think I will let you ask if he was the beneficiary.

Mr. Murphy: If he does that, then I certainly would be permitted to ask when he was designated as beneficiary.

[67] *Cross Examination resumed by Mr. Dodson:*

Q. I was asking you at the time we adjourned for lunch if you did receive the retirement money from your sister? A. Yes, I did. 93

Q. How much did that amount to? A. How much was it, do you mean?

Q. Yes. A. Well, it was around about \$700.

Q. Do you know exactly how much it was? A. I says, \$700.

Q. Was it \$700 even or \$800? A. It was \$700. I said nothing about being even. \$700 is \$700. If it had been any more I would have said more. If it had been \$800 I would have said \$800.

Q. You are sure it was no more than \$700? A. Yes.

[68] Q. Did she ever make any complaints to you about

94

Caveator's Witness, Ward C. Duckett, Cross

the care she was receiving? A. I didn't ask her nothing about how she was being cared for.

Q. You didn't ask her that; you were not interested? A. I was interested, but I didn't ask her that. She was quiet in there. I didn't ask her anything, only if she would ask me something.

Q. You want this jury to understand you don't know how she was being taken care of during the two weeks she was in the home after her release from the hospital? A. Well, any time I went in the room she would be lying still.

95

Q. You understand my question, don't you? A. Yes.

Q. You would know if she was being fed properly, wouldn't you? A. They would carry the stuff up to her. Whether she ate it or not, I don't know.

Q. Was she kept clean? A. Yes, my niece kept her clean.

Q. What niece was that? A. Janie Brown.

Q. She kept her clean? A. Yes.

Q. Even during the time Miss Duckett was waiting on her? A. She washed her clothes.

[69] Q. I mean keeping her person clean, and her body.

96

A. I thought you were speaking about her clothes. I don't know anything about her body.

Q. How about the attention which she herself received? A. Who?

Q. Your sister, Mrs. Diggs. Did she give you the appearance of a person being well taken care of when you would see her in the morning and evening? A. That is what I said. When I saw her she was perfectly quiet.

Q. You don't know anything about how she was being taken care of? A. In the mornings when I was going out there wasn't no time to be in her room. I would just look in her room and go to my work. When I came back in the evening she would be in almost the same position.

[70] *Re-direct Examination by Mr. Murphy:*

Q. When did your sister designate you as beneficiary of that retirement fund? A. About ten or fifteen years before she died.

Q. That is when she named you as beneficiary of the retirement money? A. Yes.

[72] MRS. JANIE DUCKETT was called as a witness for and on behalf of the Caveator, and having been first duly sworn, was examined and testified as follows:

98

Direct Examination by Mr. Murphy:

Q. Will you give your full name to the Court? A. Janie Duckett.

Q. Where do you live? A. 615 C Street, Southeast.

Q. What relation are you to Mary Frances Diggs? A. Sister-in-law.

Q. Relative to the time your sister-in-law was sick at home, were you there at her house at all? A. Well, the first day she was taken sick, I went there that morning. She sent me word that she was sick, so I had been sick myself, but I got my son-in-law to take me down there. I didn't walk. When I got down there she was in bed.

99

Q. Was that before she was taken to the hospital? A. Yes.

Q. After she was taken to the hospital, did you still remain there at Mary's home? A. No, sir. She sent and got her sister.

Q. Which sister? A. Mary Stewart. She sent and got her on a Wednesday or Thursday, and asked her to stay there. So I didn't remain there.

Q. Did you see your sister-in-law, Mary Frances Diggs, at any time while she was in the hospital? A. No, sir. I didn't go to the hospital because I was sick myself.

100

Caveator's Witness, Janie Duckett, Direct

Q. After she came home from the hospital were you at the house after she came home? A. After she came home I went to the house. I was keeping the house while my other sister-in-law went to the country. That was the week she died. The first week she was there my sister-in-law was at the house.

Q. After she came from the hospital, you were at the house? A. I was at the house.

101

[74] Q. What were your duties at the house? A. I was downstairs cooking and cleaning up. I didn't have to wait on her or nothing at all, I was downstairs cooking and cleaning up.

Q. While you were there, did Mrs. Cecelia Walker visit the house very often? A. Yes, sir. She was there most every day, I think.

Q. Did she and Maude ever engage in any conversations, to your knowledge? A. Well, they were going around there talking about themselves, but I didn't bother with that.

Q. Did you go upstairs very often to see your sister? A. No, sir, because she was real sick. I didn't go up to see her.

102

Q. Did Maude ever tell you you could go up to see her? A. She said she wouldn't like for no one to go up to see her because it would make her lose her license, and she didn't want her to talk to anyone.

Q. Make her lose her license? A. Yes, she was a nurse.

Q. Maude was a nurse? A. Yes.

Q. She said it would make her lose her license if she permitted you to go up and see her? A. Yes.

Q. Did Mrs. Walker go up to see her? A. I reckon she did.

Q. Did Maude ever try to stop her from going up to see her, to your knowledge? [75] A. No, sir, I don't reckon she did.

Q. On the morning of April 25th, the day before your

sister died, was Cecelia Walker over at the house that day? A. Yes, sir, she was there that morning, and then she went out.

Q. What time that morning did she get there? A. To my remembrance, it must have been 8 o'clock or half-past.

Q. How long did she stay? A. She didn't stay there so long; then she went out again.

Q. While she was there, was she engaged in any conversation with Maude, to your knowledge? A. They were upstairs. I didn't bother them.

Q. Did they come downstairs at any time? A. Yes. Maude came down and fixed up the breakfast.

Q. Where was Cecelia Walker at this time? A. I think she was upstairs when Maude came down.

Q. Did Cecelia Walker come down after that? A. She came down when she went out.

Q. When she went out? A. Yes.

Q. What, if anything, were their conversations on that particular morning of April 25th? Did they talk in their usual tone of voice like they had been in the habit of talking?

Mr. Dodson: If your Honor please, I think that is definitely leading.

The Court: It is somewhat leading. I think she ought to be able to tell her own story.

[76] By Mr. Murphy:

Q. Mrs. Duckett, did you hear any conversation between Maude and Cecelia Walker on that morning? A. No, sir, I didn't hear nothing. They were talking but I didn't understand nothing they were saying.

Q. Were they talking loud or soft? A. They were talking to themselves.

Q. They were talking to themselves? A. They were not talking to me.

Q. Did they usually talk in a loud tone of voice? A. Yes, sir, sometimes when they came downstairs they were right lively, but that morning they were not so lively. They were talking to themselves.

Q. After Cecelia Walker left the house, how long was it after that she returned to the house? A. She was gone a right good while before she came back. Then she came back and came in the front room and sat at the window and looked out the window until a man came. When the man came she went to the door and met him and went up the steps with him.

107 Q. Did you see that man? A. Yes, sir. I was sitting in the front room when he came.

Q. Do you see him here in court? A. Yes, sir. I think he is the one over there (indicating).

Q. Mr. Gray over here? A. Yes, sir.

Q. You say Cecelia Walker took him upstairs? [77] A. Yes, sir. She met him right at the door and carried him upstairs.

Q. Where was Maude at this time? A. She was upstairs.

Q. Maude was already up there? A. Yes.

108 Q. Did Mr. Gray or Mrs. Walker or Maude come back downstairs? A. Maude came down and laughed and said to me, "They drove me out," but she didn't say why they drove her out or nothing. She just said, "They drove me out."

Q. Did Mr. Gray come down after that? A. He came down when he went out.

Q. When he was ready to leave? A. Yes, sir.

Q. Do you know whether Mr. Gray came down and went into the dining room and sat at the dining room table to write up the will? A. No, sir, I didn't see him in there. I was in the front room and you had to come through the front room to go into the dining room. I didn't see him in no dining room to write up no will.

Mr. Murphy: I think that is all.

Cross Examination by Mr. Dodson:

Q. Were you staying at the house at that time? A. Yes, I was staying there.

Q. Mrs. Mary Stewart had then left? [78] A. Yes, she had to go to the country. She left and put me in her place until she come back.

Q. What day did you get there? A. I came there the day she left.

Q. What day was that? A. I cannot remember what day it was, but the day she went to the country I came there.

110

Q. How long before Mrs. Diggs died was that? A. One week.

Q. Exactly one week? A. Yes.

Q. So, if Mrs. Diggs died on Saturday, you came there the Saturday before? A. The Saturday before.

Q. Did you spend your full time there at the house? A. Yes.

Q. Did you stay there at night? A. No, sir, I went home every night about 11 or 12 o'clock. My son-in-law came after me.

Q. What time did you return in the morning? A. In the morning.

111

Q. What time? A. Well, about 8 o'clock.

Q. I believe you testified you never went to see your sister-in-law in the hospital? A. No, sir. I didn't go to the hospital. I was sick myself at that time.

Q. You saw your sister-in-law every day while she was sick at home? [79] A. I didn't go in to speak to her at any time while she was sick.

Q. You didn't go into where she was? A. Into her room?

Q. You didn't go in there? A. No, sir.

Q. Why not? A. First, I didn't want to bother her; I was afraid I would make her worse. They said they didn't want her to talk to anyone.

112

Caveator's Witness, Janie Duckett, Cross

Q. That is the only reason you didn't go in? A. Yes, sir.

Q. You never went in to inquire how she was feeling?

A. I would ask the nurse how she was feeling—Maude.

[82] Q. Mrs. Cecelia Walker was friendly with everybody who came in wasn't she? A. I guess she was.

Q. You saw that? A. Yes, I saw her there.

Q. You didn't see the attitude of any of those people change, did you—Mrs. Cecelia Walker's attitude? A. I didn't see nothing much.

113

Q. You talked with Miss Maude Duckett? A. Yes, certainly I talked to her when I got ready to talk with her.

Q. And she talked with you? A. Yes.

Q. The fact that she carried on a conversation with Mrs. Cecelia Walker, there wasn't anything strange about that, was there? A. I don't guess there was.

Q. Whenever you needed any supplies, or any medicines, or anything else, you had to get them from Mrs. Cecelia Walker? A. Yes.

Q. Whenever Miss Duckett wanted any supplies for the sickroom, she would have to get them from Mrs. Cecelia Walker, wouldn't she? A. I reckon so; I know what I needed, I asked her for.

114

[83] Q. How do you happen to remember that on this particular morning—do you remember what time Mrs. Cecelia Walker came there on the Thursday before Mrs. Diggs died? A. On Thursday?

Q. Yes. A. She always came in the morning, I know, but I don't know exactly what time.

Q. You just said in answer to Mr. Murphy that she came on this Friday morning about 8 or 8:30? A. About 8 or 8:30, and then she goes out again and then she came—

Q. On Thursday morning immediately preceding that Friday morning, what time did she come? A. What did you say?

Caveator's Witness, Mary Agnes Stewart, Direct

115

Q. You said that Mrs. Walker came there every day?

A. Yes, she came there every day.

Q. And you have told us what time she came on Friday morning? A. Yes, she was there about 8:30 on Friday morning.

Q. Now, I am asking you about Thursday morning, the morning just before Friday, what time did she get there?

A. I don't know what time that morning, but I know Friday morning she was there about 8:30.

Q. On Wednesday morning, next to Thursday, do you know what time she came there? A. I know she came every morning.

116

Q. And on the Tuesday prior to that? A. I said she came every morning.

Q. You happen to remember especially that on Friday morning she came at 8 o'clock or 8:30? [84] A. Yes.

[87] Thereupon, MARY AGNES STEWART was called as a witness for and on behalf of the Caveator, and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

117

Q. What is your name? A. Mary Agnes Stewart.

Q. Where do you live? A. Anacostia, No. 1 Railroad Avenue, Anacostia.

Q. Are you related to Mary Frances Diggs? A. Yes, I am her sister, her oldest sister.

Q. Did you ever go to see her at any time while she was in Gallinger Hospital? A. Yes, sir. I went every visiting day.

Q. What was her physical and mental condition when you went to see her? [88] A. She was very weak and a very sick girl. I couldn't do any more than just to see her

118 *Caveator's Witness, Mary Agnes Stewart, Direct*

because she was not able to have any conversation of any kind.

Q. She could not carry on any conversation with you?

A. No.

Q. Did you put questions to her or ask her different things? A. No. She was so weak and bad off I never did. She sent for me to come over when she was first taken sick. She was taken sick on a Saturday and I went over. I had no idea she was so bad off.

119 Q. Where did you go? A. I went to her home and stayed with her until the Sunday they took her to the hospital and took care of her the best I could, gave her a bath and helped around with everything until they took her to the hospital. When she was getting ready to go to the hospital, she said, "Who is going to look after Duck?" That is Ward. I said, "Sister, you sent for me to stay with you, and I will stay and look after the house while you are in the hospital." She said, "O K. Sis is my housekeeper."

Q. You say you went to the hospital to see her? A. Every visiting day.

120 Q. Was her condition the same the last time you saw her as it was the first time you saw her? A. Oh, no, indeed. She was growing weaker all the time. I couldn't have any conversation with her. She was in a very, very weak condition.

Q. Did you see anyone else there at any time while you were at [89] the hospital, any other members of the family to see her? A. Ward used to take us over there. Ward and myself.

Q. Did you see Ward or anyone else carry on any conversation with her? A. No, they came, but they could only go in, sometimes one at a time, and sometimes two at a time. Her condition was so weak that they didn't allow only just one or two to go in at a time.

Q. Would you say she was capable of attending to

any business affairs? A. Oh, no, that girl was too sick, even the first day I saw her on Thursday, to carry on any business.

Q. Would you say she was competent to execute a valid deed or contract? A. No, I don't think she was capable of doing anything of the kind.

Q. After she was brought home from the hospital, were you at the home any time? A. She came back home on Saturday. I stayed until the next Saturday morning with her, the first week she was home. I went over and stayed with her. Janie and myself were both there. She was not able to feed herself. They had to feed her through a straw.

122

Q. Who was taking care of her at that time? A. Maude was. After we found she was so ill, we called Maude.

Q. Do you mean when she was in the hospital? A. Yes, she had gone to the hospital then.

[90] Q. Had Maude been there at the house any time previous to that? A. No, but she was a sister and we called Maude to tell her how ill she was and what we thought of it.

Q. Did your sister at any time while you saw her at the hospital, did she ever ask you to take her home? A. She never said it to me. I don't know what she said to the rest of the, because she was always too weak when I got there. One day we had to wait an hour until the doctors brought her in from taking the fluid off. She couldn't hardly breathe.

123

Q. The first week after she came home, did you go up to the room to see her? A. I went to the door.

Q. You went to the door? A. I went to the door, and I would speak to her and she would look up and call my name, but right off again she would be in a slumber like. I would stand at the door, sometimes five minutes, looking at her and watching her condition.

Q. Did you carry on any conversation with her? A. No, I didn't.

124

Caveator's Witness, Pious Duckett, Direct

Q. Did Maude ever try to keep you from going up to see her? A. Not me, because I was right there in the house, but she told me what the doctor said about her not letting so many of them go up to see her because it would affect her; when they went up they could only stay five or ten minutes at a time. They couldn't talk with her, but they could stand there and look at her after they spoke to her.

125

[91] Q. Did you ever hear Maude tell any members of the family that they couldn't go up to see her? A. Yes, sir. I have heard Maude say that once or twice, that the doctors didn't allow her to let any of them see her, only five or ten minutes.

Mr. Murphy: That is all.

[99] PIOUS DUCKETT was called as a witness for and on behalf of the Caveator, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

Q. What is your name? A. Pious Duckett.

126

Q. Where do you live? A. I live in Maryland. Brandywine, Maryland.

Q. Are you a brother of Mary Frances Diggs, the decedent in this case? A. Yes, sir.

Q. Did you go to see Mary at any time while she was in Gallinger Hospital? A. No, sir.

Q. After she was brought home from Gallinger Hospital, did you go to the house to see her? A. I did go to the house to see her.

Q. Did you have any trouble seeing her? A. I went there to see her, but they wouldn't let me see her.

Q. Who wouldn't let you see her? A. Maude Duckett, that is my sister.

Q. That is your sister? A. Yes.

[100] Q. Did she tell you why you couldn't see her? A. She didn't say why. She said if I went in there she would lose her job.

Q. If you went in there? A. If I went in there she would stop me at the door, so I didn't go in.

Q. Did you see your sister, Mary, at all, then? A. No, sir, I never seen her at all.

Q. Did you see her at any time while she was at home? A. Not after she came from the hospital.

Q. Not after she came from the hospital? A. I never seen her until after she was dead. 128

Q. Do you know of any other members of the family or outside of the family who were told that they couldn't see her? A. She told who was down there with me that they couldn't go to see her.

Q. Who was with you? A. My brother's daughter.

Q. Who was that? A. Janie.

Q. Janie Brown? A. Yes, sir. She was down there with me.

Q. Were you on friendly terms with your sister, Mary, the one that is dead? A. Always was. I was kind of a pet with her. I and her brother that is dead. We were kind of a pet with her. 129

Q. Did you go to see her right often? A. Right often. I went to see her when she got sick, when she [101] came home from work sick. Then when I went back on Sunday and Monday they didn't stop me from seeing her that night.

Mr. Murphy: That is all.

Cross Examination by Mr. Dodson:

Q. Do you remember what night that was, Mr. Duckett?

A. The night I went to see her and they didn't stop me?

130

Caveator's Witness, Pious Duckett, Cross

I don't know. I didn't keep count of it. I know it was while she was sick, after she came home.

Q. You said you never went down to the hospital at all to see her? A. No, sir, I never was at the hospital at all.

Q. You didn't see her at all during her illness? A. I only seen her once. That was when she came home from her work, I went down on a Saturday which I always had done.

131

Q. Did Miss Duckett tell you you could go in but couldn't stay more than five or ten minutes? A. No, she didn't tell me to go in. She said I couldn't see her.

Q. Did you raise any objection? A. I didn't raise any objection. I didn't have no argument with her.

Q. You had been on good terms with your sister, Miss Maude Duckett? A. Yes, we never stayed together. I hadn't seen her for years. I don't know when was the last time I had seen her before then.

Q. Your conversations with her at that time were satisfactory to you? [102] A. It was, but I was not satisfied because I wanted to see my sister and couldn't see her, and I didn't know for why.

Q. You didn't insist on seeing her? A. I didn't insist on seeing her because of what was told to me.

132

Q. Did you know what she was suffering with, your sister? Did you know what she had at that time? A. I did not.

Q. Did you make any protest to anybody else in the house that night about not seeing your sister? A. I never said nothing because I thought she was telling me the truth about it.

Q. You were perfectly satisfied with the explanation? A. No, I was not satisfied, but I didn't want to get in no argument.

Mr. Dodson: I think that is all.

Mr. Murphy: That is all.

(The witness left the stand.)

Thereupon JOSEPH DUCKETT was called as a witness for and on behalf of the caveator, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

Q. What is your full name? A. Joseph Clayton Duckett.

Q. Where do you live? A. I live in Bowie.

[103] Q. Are you a brother of Mary Frances Diggs, the decedent in this case? A. Well, I am, as far as I know, according to what my mother and father said.

Q. Were you and Mary, during her lifetime, on friendly terms? A. Always.

Q. Did you visit her very often? A. Well, I visited her around about every four or five months, at different times.

Q. And were you and your sister, Maude, on friendly terms? A. Well, I never seen her very much after she left my house. She left my house in 1909 and was married to a fellow that used to work with me.

[104] Q. After Mary was brought home, did you see her? [105] A. I went there once before she died.

Q. Did you see her? A. No, I was prevented from seeing her by my sister.

Q. Which sister? A. My sister, Maude.

Q. Did Maude tell you why you couldn't see her? A. She claimed that the rules and regulations that she had received from the doctor, she couldn't let anyone see her.

Q. Did she say anything about she would lose her license as a nurse if she permitted you to see her? A. She did.

Q. She said the doctor had so instructed her?

Mr. Dodson: I think you ought to let the witness testify.

The Court: Yes, I think you are leading the witness.

By Mr. Murphy:

Q. Joseph, just what did Maude say? Give us Maude's own language. A. She says to me, "Joe, I have orders from the doctor that no one can see Mary Frances." Well, I figured it was some kind of a contagious disease that no one was allowed in. I took that for granted and left.

[106] *Cross Examination by Mr. Dodson:*

137 Q. You saw your sister at home when she was taken home? A. When she was taken home.

Q. After she had been in the hospital you saw her? A. I didn't see her.

Q. Sir? A. I didn't see her.

Q. Are you positive you never saw her? A. That is what I am telling you.

Q. Do you remember testifying in court about a year ago? A. I do.

Q. Do you recall on that occasion you said you did see her, although your sister didn't want you to see her, that you went on and saw her anyway, and told your sister that you would see her? A. If I said I seen her anyway?

138 Q. Yes. A. I think you are mistaken.

[107] Q. You never did so testify? A. I think you got the wrong idea when you wrote that down.

Q. So you say you didn't see her after she came back from the hospital? A. She was dead when I saw her.

Q. Did you go to the house? A. I was there to see her, but I was not permitted to see her. I would have seen her anyway, but I thought it was some kind of a contagious disease, that that was why I couldn't see her, so I didn't impose on them.

Q. You say you figured that? Were you told that because of the disease she had it would not be well for you

to go in and stay more than five or ten minutes? A. I didn't know that.

Q. Did anybody tell you that? A. No.

Q. You said you figured she had some contagious disease? A. I figured that in my own mind.

Q. No one told you that? A. No one told me that.

Q. When you were denied the right to see her at that time, you didn't object? A. I didn't object to what?

Q. I mean, you didn't make any fuss about not seeing her? A. No.

Q. You didn't protest to anybody that you ought to see her? A. No. 140

[108] Q. You were perfectly satisfied with what was told you at that time? A. Why, sure.

Q. You felt at that time it was for the best interests of the patient? A. Yes, sir, that is right.

[110] JANIE BROWN was called as a witness for and on behalf of the caveator, and having been first duly sworn, was examined and testified as follows:

[111] *By Mr. Murphy:*

141

Q. Give us your full name. A. Janie Brown.

Q. Where do you live? A. 615 C Street, Southeast.

Q. Were you related to Mary Frances Diggs during her lifetime? A. Her niece.

[112] Q. Did you see her after she was brought home? A. I did not.

Q. You didn't see her at all? [113] A. Not after she was brought home.

Q. Were you at her home after she was brought home? A. I was, every night.

Q. Did you stay there at night? A. I did, every night.

Q. Did you ask to see her? A. I asked to see her, but she told me I couldn't see her.

142

Caveator's Witness, Janie Brown, Cross

Q. "She" told you? Who? A. My Aunt Maude.

Q. She told you you couldn't see her? A. She told me I couldn't see her.

Q. Did she tell you why you couldn't see her? A. She said she was a nurse and if I went in to see her, they would take her license away from her.

Mr. Murphy: That is all.

Cross Examination by Mr. Dodson:

143 Q. Are you Miss Brown, or Mrs. Brown? A. Mrs. Brown.

Q. What kind of will power did your aunt, Mrs. Diggs, have? Was she a strong willed person? A. I don't know.

Q. You don't know? A. What do you mean? When she was working?

Q. Was she a person who had a mind of her own, a strong determination of her own? A. When she was working she seemed to be all right.

[114] Q. With respect to her will power and determination, was she a person who was determined, or was she a person that was easily influenced—like so much putty in your hands? (No answer)

144 Q. You knew your aunt well? A. Oh, yes.

Q. Through the years? A. Sure.

Q. You know what we mean when we say a person is very determined and has a will of their own? A. Yes, I do.

Q. Was she that type of person? (No answer.)

The Court: Do you understand the question?

The Witness: I don't understand what he means.

The Court: He is asking you if you know what he means by saying a person is a person of determination and strong will power and so on? You said you knew that. Now he is asking you is that the kind of person your aunt was? Can you answer that?

The Witness: Do you mean she was a strong woman?

The Court: Not physically, but determined, stubborn, set in her ways.

The Witness: No, she was not a stubborn woman like that.

By Mr. Dodson:

Q. Was she set in her ways? Did she have her own mind about things? (No response.)

The Court: I am afraid it isn't clear to her.

[115] Mr. Dodson: She clicked on one word, "stub- 146
born." She said she understood what I mean.

The Witness: I mean she was not a stubborn woman.

By Mr. Dodson:

Q. You know what I mean when we say a person is very determined, a person that has a will of their own?

A. Yes.

Q. Meaning a person that is not easily turned around by anybody else. That is what it means, isn't it? A. Well, I couldn't answer on that.

Q. Well, was she a person easily influenced by other people? A. I said I couldn't answer you on that question. 147

Q. Was she a person who didn't have any mind on anything of her own? A. I guess she had a mind when she was up on her feet.

Q. Don't you know? You saw her frequently. A. When she was on her feet she had a mind.

Q. What kind of a mind did she have when she was on her feet? Was she a person that was easily turned around by other people? Was she that type of person? A. No, not easily turned around like that.

Q. She was a person whenever she would set a course for herself she usually stuck to it, didn't she? A. I don't know.

148

Caveator's Witness, Janie Brown, Cross

Q. What? A. I am not going to say.

Q. You are not going to say? A. Because I don't know.

[116] Mr. Murphy: He cannot make a witness answer a question like that because it is a matter of opinion.

Mr. Dodson: I think I have a right to press it for the jury to see the type of witness she is.

The Court: Well, I am not going to make her answer the question when she says she doesn't know.

149

Mr. Murphy: It is not a question of the type of witness she is. That is a detrimental statement. It is a question of whether she understands him or not.

The Court: Yes.

Mr. Dodson: It goes to her credibility.

By Mr. Dodson:

Q. Mrs. Brown, when you went down to the hospital, you said you were there every visiting day. When were the visiting days? A. Wednesdays and Saturdays at night.

Q. Wasn't it Wednesday and Friday? A. I mean when I went down there.

150

Q. Did they have special visiting hours for you? A. Well, I was working. I couldn't get down there all the time.

Q. Did you ever see any of the other relatives there? A. I did.

Q. Would they be carrying on conversations with her? A. We all couldn't go in the room at one time.

Q. At least two could go in the room at one time? A. Two.

Q. She would recognize those folks? A. I wasn't in the room all the time with them.

[117] Q. At the time you were in there when somebody else was in there, did she recognize the other party who

would be in there? A. Like me and my husband would be in there, or my aunt.

Q. Which aunt was that? A. Mrs. Stewart.

Q. Would she recognize Mrs. Stewart? A. Well, I didn't stay in there that long.

Q. Would she recognize you? A. When she first went to the hospital, but toward the last she did not.

Q. When you say when she first went there—how long was she in Gallinger Hospital? A. About two weeks and a half.

Q. About how long was it while she was in there that she recognized you? A. In the first week she went there. 152

Q. During the week and a half remaining; she didn't recognize you? A. No, she didn't.

Q. Was there anything wrong with her eyesight? A. She couldn't see good. I know that.

Q. Do you think that was the reason she didn't recognize you because she couldn't see you? A. I don't know.

Q. Would you identify yourself to her? A. I would tell her who I was.

Q. What would she say? A. Sometimes she would say something. I would try to tell her who I was. She didn't talk about anything.

[118] Q. Would you ask her how she was feeling? A. 153
Sure.

Q. What would she say? A. Sometimes she would say she was feeling right good, when she would answer me.

Q. Did she ever ask you anything about home? A. No.

Q. Did she ask you how Duck was making out? A.
When she first went to the hospital she did.

154

Caveator's Witness, William R. Duckett, Direct
Caveator's Witness, Lena L. Hicks, Direct

[120] Thereupon WILLIAM R. DUCKETT was called as a witness for and on behalf of the caveator and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

Q. What is your full name? A. William R. Duckett.

Q. Where do you live? A. 1921 Rosedale Street, Northeast.

155 Q. Are you a nephew of Mary Frances Diggs? A. That is right.

[121] Q. Did you see her after she was brought home from the hospital? A. No.

Q. Did you go to the house and make an attempt to see her? A. I did.

Q. Why didn't you see her? [122] A. Because her sister said I couldn't see her.

Q. What sister? A. Maude Duckett.

Q. Did she tell you why you couldn't see her? A. She didn't say why.

Q. She just told you you couldn't see her? A. She just told me I couldn't see her.

156

[126] LENA L. HICKS was called as a witness for and on behalf of the caveator, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Murphy:

Q. What is your name? A. Lena L. Hicks.

Q. Where do you live? A. 341 G Street, Southeast.

Q. Are you a niece of Mary Frances Diggs? A. I am.

[128] Q. Did you see her after she came home from the hospital? A. No.

Q. Did you go to the house to see her? A. Yes, I did.

Q. Why didn't you see her? A. Because Aunt Maude would not let me see her.

Q. Did your Aunt Maude say why you couldn't see her? A. She told me it was against the doctor's orders for me to see her, and if she did let me see her she would lose her license.

Q. Did you hear your Aunt Maude tell that to anybody else while you were at the house? A. No, sir.

Cross Examination by Mr. Dodson:

Q. How often did you visit the house after she got out of the hospital while she was sick? A. I went there once.

Q. When was that? A. That was about three days before she died.

Q. Was it day or night time? A. Day.

Q. What time of day was it? A. About 1 o'clock.

Q. Whom did you see there? [129] A. I saw Aunt Maude.

Q. Who else? A. No one else.

Q. Did you see Mrs. Janie Duckett there? A. No.

Q. Who opened the door for you? A. Aunt Maude.

Q. Did you go into the house? A. No, I didn't.

Q. You didn't come in? A. No.

Q. You received what information you wanted at the door? A. Yes.

Q. What was the information you received there? A. That I couldn't see my aunt.

[130] Q. Would you tell her who you were? A. I asked her first if she knew who I was.

Q. What did she say? A. She said no, she didn't.

Q. After you would identify yourself, would she then recognize you? [131] A. No, she wouldn't.

Q. She didn't recognize you—that was during the first week. When you went back there during the second week she didn't recognize you? A. No, she didn't.

160 | *Caveator's Witness, Eleanor Middleton, Cross*

[133] ELEANOR MIDDLETON was called as a witness for and on behalf of the caveator, and having been first duly sworn, was examined and testified as follows:

[134] *Direct Examination by Mr. Murphy:*

Q. State your full name. A. Alice Corrine Eleanor Middleton.

Q. Where do you live? A. 333 E Street, Southeast.

Q. Are you a niece of Mary Frances Diggs? A. I am.

161 [135] Q. Did you see her after she came home from the hospital? A. No.

Q. Did you go to the house to see her? A. I did.

Q. Why didn't you see her? A. Maude said I couldn't see her because the doctor said if anyone went to see my aunt she would lose her license. Her license would be taken away from her.

Q. Are you referring to Maude Duckett? A. Maude Duckett.

Q. So, you didn't see your aunt, Mary Frances Diggs? A. No, I didn't.

Mr. Murphy: That is all.

162 *Cross Examination by Mr. Dodson:*

Q. Were you down to the hospital the day she was taken away from the hospital? A. No.

[136] Q. Were you ever there at a time when she was there, and Mrs. Walker was there and Miss Maude Duckett was there? A. Yes, I was.

Q. Making arrangements for her withdrawal from the hospital? A. Yes, I was there when they were making withdrawal.

Q. You heard the conversation between them and the doctor about getting her home? A. No, I didn't see the doctor.

Q. Did Mrs. Diggs have any trouble with her eyesight?
A. Yes, she did.

Q. Difficulty in seeing people? A. Yes, because I walked up to her and she didn't see me.

Q. She had that trouble before she got into the hospital, didn't she? A. Yes, she did.

Q. She had that trouble for some time before she got sick—for a considerable period of time? A. Oh, yes, she did.

Q. So that there wasn't anything strange about the fact she didn't recognize you when you came in the room at the hospital? A. Well, she was very weak.

164

Q. I mean there wasn't anything strange about the fact she didn't recognize you by seeing you? A. Oh, no.

Q. Because she had been in that condition for some considerable period of time before she had this present illness? A. Yes, sir.

[139] Q. What she told you made sense, didn't it? A. She said she felt pretty good and that was all.

Q. It made sense, didn't it? A. (No answer.)

Q. Regardless of how long she took to say it, when she did talk to you, whatever she said made sense, did it not? A. Yes.

Q. Was there ever an occasion that you talked with her that what you had to say didn't make sense? A. Yes.

165

Q. When was that? A. The time I was there.

Q. What time was that? A. One Sunday.

Q. What was the thing she said that didn't make sense? A. I couldn't understand her.

Q. Oh, you couldn't understand her? A. Well, I just couldn't.

Q. You mean because the voice wasn't loud enough? A. Yes, sir.

Q. Can you tell the jury any statement which she

166

Caveatee's Witness, Cecelia Walker, Direct

did make which you could hear that didn't make sense?

A. When?

Q. At any time during her illness? [140] A. One time she was so weak when I was talking to her I couldn't understand what she was saying.

Q. You couldn't understand her because you couldn't hear the words? A. No, her voice was very, very weak.

Q. She had never spoken words to you which you did hear that you didn't understand? A. All the time I asked her how she felt.

167

Q. Did you put any other questions to her? A. No, I didn't.

[175] *Further evidence on behalf of the caveatee.*

Thereupon, CECELIA WALKER was recalled as a witness for and on behalf of the caveatee, and having been previously duly sworn, was examined and testified further as follows:

Further Direct Examination by Mr. Dodson:

168

Q. I believe you testified you attended to the business for Mrs. Diggs while she was ill? A. Yes, I did.

Q. Did you visit her when she was in the hospital after she was first taken sick at home and then taken to the hospital? A. Yes, sir, I did.

Q. How often did you visit her? A. Oh, mostly every visiting day.

Q. Were you able to converse with her when you went there? A. Yes, I always talked with her.

Q. Did she recognize you? A. Yes, she did, always.

Q. What would you discuss with her on those occasions? A. Well, she wanted to know how everything was going on at home and if there was anything she

wanted done like a bill to be paid she would tell me to do it.

Q. Did she ever tell you where her funds and bank books were? A. Yes, on one occasion she had a Christmas savings account, and she wanted to pay something on it, so she told me [176] where to look for it at home, where to find that book, which I did and made the payment.

Q. Did you find the book where she told you it was?

A. Yes.

Q. What else would you talk about at the times you would go there? A. What did we talk about? 170

Q. Did she ask about any particular people? A. She wanted to know about her brother, how he was getting along and how everything was going on at home.

Q. Did you ever find her at the hospital in a coma?

A. No, I sincerely can say I never did.

Q. Were you ever there when other members of the family would come to the hospital? A. Yes.

Q. Would she recognize them? A. As far as I know.

Q. Did she ever express to you her desire to come home? A. Oh, yes, that was her great cry, every time I went there; she was dissatisfied, and she just begged to come home. 171

Q. Now, on the particular day that arrangements were made to bring her home, who was present at the hospital? A. Well, the sister Maude and the brother Ward.

Q. And you? A. Yes, and myself.

Q. Did you all discuss the matter then with the doctor at that time? A. Well, we went around, Ward, Maude and I, we went around to locate this doctor. Then, after we located this [177] doctor, of course we wanted to know what we could do about it since she wanted to go home.

Q. At that time did Ward offer any objections to bringing her home? A. No, he didn't.

172

Caveatee's Witness, Cecelia Walker, Direct

Q. Did he ever say it was not a good thing to do?

A. He certainly did not. Not to me.

Q. Did he say it in your presence to the doctor? A. He certainly did not.

Q. Now, after she left the hospital, how often did you see her when she was carried home? A. Oh, pretty much every day.

Q. Did you ever hear Miss Maude Duckett deny anybody the right to see Mrs. Diggs? A. Not while I was there.

173

Q. Did you see her? A. Mrs. Diggs? Yes, I did.

Q. When you saw her, what would you discuss with her? A. Well, we would discuss the business and if there was anything she wanted me to do she would let me know.

174

Q. Did you have any difficulty understanding her? A. No, I didn't. She always recognized me and was always glad to see me. As I said, we were not only cousins, we were good friends. She liked me very much and I liked her. We liked each other. Whenever I could I had always helped in this family. When anyone was sick she always called me. They [178] all liked me and seemed to be very fond of me until the day the will was read and then they all turned against me. I cannot understand it. I have never done anything to hurt them. I have been loyal to that family. I just cannot understand why they turned on me so after the will was read, which I had no control over.

Q. During the time you were there, did you ever observe Maude Duckett using any unusual influence over Mrs. Diggs? A. No, I didn't.

Q. What kind of care did she get during her last days? A. As far as I could observe it was all right.

Q. Did Mrs. Diggs ever complain to you about the care she was receiving? A. She certainly did not.

Q. Did she seem happier there than she was in the

hospital? A. Oh, yes, she was so satisfied and so glad to get home.

Q. Remembering that she died on the 26th, I believe, had you seen her that week? A. Yes.

Q. The week prior to her death? A. Yes.

Q. Had you discussed matters with her when you talked with her? A. Yes.

Q. As a result of your observation of her and your discussions with her as to the business transactions, do you have an opinion as to her mental condition at that time? [179] A. Oh, yes. Sure. Her mind was just as clear as mine.

176

Q. What type of individual was Mrs. Diggs with reference to her will power or determination? A. Well, she was a very determined person, set in her ways.

Q. Now, directing your attention to her while she was in the hospital, was there any change in that respect, with respect to her character in the hospital, while she was in the hospital? Was she any different from that? A. No.

Q. She was still determined and set in her ways? A. Yes, yes.

Q. After she was brought home, from your daily observations of her, did you notice any difference in her will power in that respect? A. No, I didn't.

177

Q. She was the same determined person? A. Yes.

Q. Now, directing your attention to the day that the will was drawn; that was on Friday. A. Yes.

Q. Did you talk with her that morning? A. Yes, I did.

Q. What was her mental condition that day? A. It was just the same as always.

Q. Was she in a coma at any time that you saw her? A. No, I never saw her in a coma.

Q. Did she know what she was doing on that day? A. She certainly did.

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Caveatee's Witness, Cecelia Walker, Cross

[180] Q. Did she discuss any transactions with you?
A. Yes.

Q. What, in your opinion, was her mental condition on that day, on the Friday that the will was drawn? Would you say she had the capacity to execute a valid deed or contract? A. Oh, yes, I should say.

Q. In her conversations that day, will you state to the Court just how they were; I mean whether they were clear and fluent, or just what was the nature of the conversations? A. Oh, they were perfectly clear.

179

Q. You had no difficulty understanding her? A. No, I never did.

Q. Did Mrs. Diggs ever ask you for an accounting after you had attended to some business? Would you have to account to her from time to time? A. No, she always left everything to me. I would tell her what I had done. If she wanted to see the bills I would always show them to her.

Mr. Dodson: I think that is all.

Cross Examination by Mr. Murphy:

180

Q. Mrs. Walker, had you ever attended to any of Mrs. Digg's business affairs for her before she went to the hospital? A. No.

Q. She was in the hospital about three weeks. Just what business affairs did she have to take care of or attend to during that time? A. It was paying her current expenses, light and gas, electric, and a bill to the plumber who had done some work [181] there and making some deposits on her Christmas savings, and going to the store and buying food.

Q. That all came about, the gas and electric bills, and the plumbing bill, during the three weeks she was in the hospital? A. And at home.

Q. And after she was brought home from the hospital?

A. Yes.

Q. Was that all the business affairs you attended to for her? A. Yes, that is all financially, I believe. I cannot recall anything at this moment.

Q. When was the last time you saw Mrs. Diggs before she died? A. That was on Saturday—just before she died.

Q. Just before she died? A. Yes, I was there.

Q. She died at 8 P. M., Saturday, is that right? A. I believe it was. I was there when she died.

Q. How long before she died was it that Mrs. Diggs was not capable of executing a valid deed or contract?

A. How long she was not?

Q. Yes. A. To my knowing, I never saw her in a condition when she was not in her right mind, or incapable of executing a will or anything.

Q. She was very well right up to the time of her death?

A. Yes.

Q. Her condition from the first time you saw her in the [182] hospital and even a week before she went to the hospital, up to the time of her death, had not changed? A. No.

Q. She wasn't any worse? A. It was always the same. 183

Q. It was always the same? A. Yes.

Q. Mrs. Walker, you recall testifying in this case before? A. Yes.

Q. I mean in the previous trial of this case? A. Yes.

Q. Do you recall your testimony in that instance when you were asked the question as to whether or not you had telephoned at Mrs. Digg's house, or whether you went around to your own home to call the lawyer? Do you recall what your answer was at that time? A. Well, I don't know, but on that occasion, why, I used my phone, because as I said yesterday, it was on Thursday evening and I was to call the next morning to this office.

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Caveatee's Witness, Cecelia Walker, Cross

Naturally, I called from my house because naturally I was there and I waited until about nine o'clock until the office opened. Then I made the call and contacted, as I said yesterday, Mr. Wilcox.

Q. That is what you said yesterday? A. Yes.

Q. Is that the same thing you said when this case was tried before? A. (No answer.)

Q. Let me refresh your recollection—

[183] Mr. Dodson: You have a question pending. Let her answer it.

185

By Mr. Murphy:

Q. All right. Is that the same answer you gave when the case was tried before? A. I don't know whether it was exactly in the same words, but that is what took place.

Q. Was there a telephone in Mrs. Digg's house? A. Oh, sure, sure.

Q. Had you ever used that phone? A. No.

Q. Did you know where it was located? A. Oh, surely, surely.

Q. Do you recall whether it was a limited or unlimited phone? A. I believe it was unlimited.

186

Q. What was your phone? A. Mine is limited.

Q. Yours is limited? A. Yes.

Q. Do you recall some testimony at the previous trial—I asked you this same question as to whether it was a limited or unlimited phone, and asked you why you left Mrs. Digg's house where there was an unlimited phone and went to your house to use a limited phone. Do you recall my asking you that? A. I really don't. Maybe you did, but I really don't recall.

Q. And you don't recall what your testimony was at that time as to whether or not you used the phone in Mrs. Digg's house? [184] A. I am absolutely sure I said I used the phone at my house. I am sure of that. So

much has taken place in those three years—I have had sickness and death and one thing and another. I cannot remember every word I said, but I know I used the phone at my house.

Q. You know now that you used the phone at your house? A. Yes, and if I am not mistaken I said that before. I couldn't say anything else, because I did use my phone.

Mr. Murphy: That is all.

Mr. Dodson: That is all.

(The witness left the stand.)

Thereupon, MARIE GREENFIELD was called as a witness for and on behalf of the caveatee and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. Will you state to the Court and jury, your full name? A. Mrs. Marie Loretta Smith Greenfield.

Q. Where do you live, Mrs. Greenfield? A. 316 Kentucky Avenue, Southeast.

Q. With reference to where Mrs. Diggs lived in her lifetime, where is that? A. 314 Kentucky Avenue.

Q. Next door? A. Next door.

Q. During her lifetime did you know Mrs. Diggs? [185]? A. I have known Mrs. Diggs for about 15 years or more.

Q. During the time you have lived next door to her? A. Yes, I did.

Q. Do you recall when she was ill in March and April of 1941? A. Yes, sir, I do.

Q. Did you visit her while she was in the hospital? A. Yes, I did.

190 *Caveatee's Witness, Marie Greenfield, Direct*

Q. On how many occasions did you visit her at the hospital? A. About twice.

Q. On those occasions when you went to the hospital, what did you do? A. Well, I went to the ward to see her, and I inquired about her health. She told me that—I asked her did she have any pain. She said no, she didn't have any pain. She just had a tired feeling.

Q. Did she recognize you? A. Yes.

Q. Did she ask you anything else alone? A. She asked me why I hadn't been to see her before, and I told her my foot was still sore.

191 Q. What did she say about that? A. She asked me did I use the ointment that she had suggested I use.

Q. Had she, as a matter of fact, suggested some ointment for you to use? A. Yes.

Q. Was that before she went to the hospital? [186] A. Yes.

Q. Was she ever in a coma when you went there to visit her? A. No, she was not.

Q. Did she recognize you on the other occasion you went there? A. Yes, she did.

Q. Was there any difficulty in recognizing you? A. No, none at all.

192 Q. How were these conversations when you had them with her on this occasion? A. Oh, it was just a general conversation.

Q. Was it understandable? A. Sure.

Q. Was it different from her conversation that you had had with her during the years? A. None whatever.

Q. What type of person was Mrs. Diggs, as to her determination and will power? A. Well, so far as I know, Mrs. Diggs was a very determined type of person.

Q. During the time you saw her at the hospital, did she still have that same characteristic? A. Yes, indeed.

Q. Did there come a time when you saw her at the house after that—when she came home? A. Yes.

Q. When was that? A. It was on a Friday, I am sure, but I don't know whether it was the first week or second week after she came home.

[187] Q. You don't know whether it was the Friday before she died, or not? A. Yes, it was the Friday before she died.

Q. It was the Friday before she died? A. Yes.

Q. What time of the day was that? Did you see her in the afternoon, or morning? A. It was in the afternoon.

Q. And on that occasion did you talk with her? A. Yes.

Q. She recognized you? A. Yes, she did.

Q. Was there anything different in her attitude at that time from other occasions? A. No.

Q. Was she in a coma? A. No.

Q. Was there any change in her will power or determination on that occasion from the other occasions you had seen her? A. None that I could see.

Q. Do you have any financial interest in this case at all? A. No, I don't have any interest in it at all.

Q. You are just a friend and a neighbor? A. That is all.

Mr. Dodson: I think that is all.

Cross Examination by Mr. Murphy:

[188] Q. When you saw Mrs. Diggs in the hospital, Mr. Dodson asked you as to the characteristic of determination and will power, and you said she was determined while she was in the hospital. What do you base that on? Why do you say that? A. I say she was of a determined character.

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Caveatee's Witness, Guy Northern, Direct

Q. You said she was of a determined character while in the hospital. What do you mean by that? A. Well, she asked me about my foot, and I told her it was sore, and she asked me did I use the ointment she had recommended.

Q. That was all? A. She asked me why I didn't use it.

Q. Did you see her the first week while she was in the hospital? A. I saw her the first week and the second week.

Q. You saw her the first week and the second week?

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A. Yes.

Q. And you saw her at home? A. Yes.

Q. Was her condition any worse the last time you saw her than it was the first time you saw her? A. None that I could see.

Q. I mean her physical or mental condition, either one. A. No.

Q. It was the same the last time you saw her, I think you said, the Friday before she died. A. Yes.

Mr. Murphy: That is all.

Mr. Dodson: That is all.

(189) (The witness left the stand.)

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Thereupon, GUY NORTHERN was called as a witness for and on behalf of the caveatee, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. Will you state your full name to the Court? A. Guy Northern.

Q. Where do you live? A. 1816 12th Street, Northwest.

Q. During her lifetime, did you know Mrs. Mary Frances Diggs? A. I certainly did. I knew her for 15 years.

Q. Did you know where she worked? A. I certainly did. She worked in the Agricultural Department in the south building.

Q. Are you also employed there? A. I am employed there.

Q. Did you develop an acquaintanceship as a result of your working together? A. Yes, we did.

Q. Directing your attention to the time she became ill and in the hospital in March of 1941, and April of 1941, did you have occasion to visit Mrs. Diggs in the hospital? A. Yes, I did. I visited her three times.

200

Q. On those occasions, were you alone when you saw her? A. Yes, I was alone.

[190] Q. What type of person, as far as her will power was concerned, was Mrs. Diggs? A. She had a strong will power.

Q. At the time you saw her at the hospital, will you tell us the result of your visit with her on that occasion, the first time? A. The first time I visited her at the hospital was on Sunday evening and I talked with her about how she was feeling and getting along.

Q. How were her answers to your questions? A. Right up to normal.

Q. Did she recognize who you were? A. She did.

201

Q. She had no difficulty in that? A. No, none at all.

Q. What else did you talk about? A. We talked about friends, and the building she worked in, and the people in the building who had asked about her from time to time.

Q. Did you ever see her in a coma while you visited the hospital? A. I did not.

Q. On the next occasion you saw her, did she recognize you? A. She certainly did.

Q. Did you talk with her? A. Yes, I did.

Q. Did you have any difficulty talking with her? A. No, none whatsoever.

202

Caveatee's Witness, Guy Northern, Direct

[191] Q. Did she understand you and you understand her? A. Yes, I certainly did, and she understood me.

Q. What—on the third occasion you saw her, was it any different from the other two? A. It was not. It was just the same.

Q. With respect to her will power and determination, could you see any evidence of that at the hospital, or was she any different in that respect? A. No, she was the same.

203

Q. After she was taken home did you have occasion to see her at home? A. Yes, I did.

Q. How many times did you see her at home? A. I visited her four times at home.

Q. When was the last time you saw her at home? A. The last time I saw her was the day before she died, on the 25th of April.

Q. That was Friday? A. That was Friday.

Q. What time of the day was that? A. Along about six o'clock.

Q. In the evening? A. In the evening.

Q. With respect to her mental condition on that day, what would you say her mental condition was on that day? A. Her mental condition on that day was good, very good.

204

Q. How long did you visit with her on that day? A. I stayed there about ten minutes.

Q. Was her mind as clear on that occasion as on other occasions? [192] A. Yes, it certainly was.

Q. Was there anything to cause you to doubt her mental capacity on that day? A. There wasn't anything.

Q. In your opinion, from your observation of her, and your conversations with her, not only on that day, but throughout this period, what was your opinion as to her soundness of mind and mental capacity? A. She was of perfectly sound mind. Her mental condition was good.

Q. Did you see any evidence in the form of any undue influence being exerted upon her? A. No, I didn't, not any whatsoever.

Q. Did you have any difficulty in seeing her at home?

A. No, I didn't.

Q. Who permitted you to see her? A. Miss Duckett.

Q. Did you have any difficulty in the hospital to see her? A. No, I didn't.

Q. I ask you this question, Mr. Northern: Do you have any financial interest in this case? A. No, none whatsoever.

Q. Did she ever complain to you about being in the hospital? A. No—well, she said she was in the hospital, and she wanted to come home. She complained about that, that she wanted to come home.

206

[193] Q. She wanted to come home? A. She wanted to come home.

Q. After she was carried home, did she seem to be happy at home? A. Yes, she was. She was very happy.

Mr. Dodson: I think that is all. You may inquire.

Cross Examination by Mr. Murphy:

Q. Mr. Northern, was there any difference in her condition the first week you saw her at the hospital and on the Friday that you saw her before she died? A. It seemed to be the same, her mental condition.

207

Q. I mean her mental and physical condition. A. Her mental and physical condition seemed to be the same.

Q. I understood you to say it was better on Friday. A. I thought it was better, at least, on Friday. Her mental condition was the same.

Q. Did you really think on Friday she was improving and getting better? A. I did, I certainly did.

Q. That she was getting better? A. Yes, because she acted like it, and her appearance looked like it.

Mr. Murphy: That is all.

Mr. Dodson: That is all. Thank you, Mr. Northern.

(The witness left the stand.)

[194] Thereupon, MYRTLE TOLSON was called as a witness for and on behalf of the caveatee, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. State your full name to the Court. A. Myrtle Tolson.

Q. Where do you live? A. 239 Tenth Street, Southeast.

Q. Were you related to Mary Frances Diggs? A. A niece.

209 Q. And were you also a niece of Miss Maude Duckett? A. Yes.

Q. You understand that if this will were thrown out, you would take? You understand that?

(No answer.)

Q. Do you? A. What do you mean, thrown out?

Q. I mean if this will were broken, you would receive something, you understand that? A. Yes.

Q. Now, during the time that your aunt, Mrs. Diggs, was ill, did you visit her at the hospital? A. I was there twice, on a Sunday and on a Wednesday.

210 Q. On that occasion, with whom did you go? A. Who I went with?

Q. Yes. [195] A. I went down there with—who was it now? I don't know who I went with now, but I went down with someone.

Q. On that occasion, did you see your aunt? A. Yes, I seen her and talked with her.

Q. Did she recognize you? A. She sure did.

Q. Did you discuss anything with her? A. No.

Q. Did you ask her anything? A. I asked her how she felt and she said pretty good.

Q. How long did you spend with her? A. I didn't spend so long because she had a lot of friends there, so I went. I only stayed a few minutes.

Q. On the second occasion did she recognize you? A. She recognized me and talked to me.

Q. What type of individual was your aunt, as far as her will power and determination were concerned? Did she have a mind of her own? A. She had a strong mind.

Q. Did she seem any weaker in that respect at the hospital? A. Not a bit.

Q. Did she ever say anything to you at the hospital about wanting to come home? A. She didn't say anything to me, but she did to others.

Q. Well, don't tell what she told others. After she was brought home did you see your aunt at the house? A. Yes, I seen her twice. I saw her Thursday night. I stayed there Thursday night and Friday night, and then I seen her again Saturday morning.

[196] Q. Did you talk with her on Thursday night? A. No, I didn't talk with her. I just went in and spoke to her.

Q. Did she recognize you? A. Yes, she spoke to me.

Q. In your opinion, did she know what she was doing on that day? A. She sure did, because she talked to me on Saturday morning.

Q. And on Friday you spoke to her also? A. I spoke to her on Friday.

Q. Did she know what she was doing then? A. She sure did.

Q. On Saturday morning—that was the day she died? A. That was the day she died.

Q. Did you have any conversation with her that morning? A. I talked with her that morning. She looked over her shoulder, and she said, "Oh, it is Myrtle." She said, "How are you feeling?" I said, "All right." I asked her how she was feeling and she said, "Pretty good." She said, "Child, don't work too hard. You see where it has got me." So, I promised her I wouldn't work too hard.

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Caveatee's Witness, Myrtle Tolson, Cross

Q. She told you that that morning? A. On the day she died.

Q. Were you there when the doctor came? A. No, I stayed until after the priest came and gave her communion. Then I went home.

Q. Were you there when the priest was there? [197] A. I was there, but I didn't go upstairs. I waited until he came down. Then I went home.

Q. You were not up there when she actually— A. Gave her communion? No, I didn't go upstairs.

215

Q. Did you ever see any of the other relatives seeing your aunt at her home? A. I seen my aunt, Aunt Mary was there. The rest of them was not there when I was there.

Q. Did they ever see Mrs. Diggs while you were there? A. No, I never stayed late. I went home early in the morning.

Q. Did you have any difficulty seeing her? A. Never.

Q. Did anybody ever tell you you couldn't see her? A. Never.

Q. Did they ever tell you at the home that you couldn't see her? A. Nobody told me that. I was welcome any time I went in to see her.

216

Mr. Dodson: That is all.

Cross Examination by Mr. Murphy:

Q. Myrtle, you were more friendly with your Aunt Maude than the rest of the family? A. They have always been friendly with her.

Q. When your Aunt Maude comes to Washington, doesn't she usually stay with you? A. Not now.

Q. Not now, but she did at that time? [198] A. No, she never did, because she always went up to Janie's when she came here or over to her sister's who died.

Caveatee's Witness, Maude Duckett, Direct

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Q. The first time you saw your Aunt Mary at the hospital, and the Friday you saw her before she died, was there any difference in her condition? A. No different to me. She always talked just the same. That is the reason I thought she was getting along fine.

Q. Did you think on Friday she was going to die? A. No, or not on Saturday morning when I talked to her, because she looked so pert, I thought she was getting better.

Q. So she really looked better than she did at the hospital? A. Yes, she certainly did.

218

Mr. Murphy: That is all.

Re-direct Examination by Mr. Dodson:

Q. Did she think she was going to die? A. No, I don't think she thought so either.

Mr. Murphy: This witness doesn't know what she thought, of course.

Mr. Dodson: She knows what she said. Well, that is all, Mrs. Tolson.

(The witness left the stand.)

219

Thereupon, MAUDE DUCKETT, the caveatee, was called as a witness in her own behalf, and having been first duly sworn, was examined, and testified as follows:

[199] *By Mr. Dodson:*

Q. Will you state your full name? A. Maude Duckett.

Q. Where do you reside? A. Philadelphia.

Q. What is your occupation? A. Nurse.

Q. Where do you practice your profession? A. Philadelphia.

220

Caveatee's Witness, Maude Duckett, Direct

Q. Directing your attention to sometime in the month of March of 1941, did you receive a communication from some one of your relatives? A. Mrs. Stone, a sister.

Q. What did you receive? A. I received a letter.

Q. Have you been able to locate that letter? A. No, I cannot, because I was so excited I guess I destroyed it.

Q. You made a search for that letter? A. I did.

Q. Have you been able to find it? A. No.

Q. What did the letter tell you? A. I received the letter on Wednesday morning. The letter stated, "Mary is very ill. Please come at once. Don't delay."

221

Q. Pursuant to that letter what did you do? A. I grabbed a couple of dresses in a suitcase and I caught the next train I could get.

[200] Q. When did you get in Washington? A. About 4:30 that afternoon.

Q. Where did you go when you got here? A. I went to Mrs. Digg's home.

Q. Whom did you see there? A. Mrs. Stewart. I called the home before I left the station. Mrs. Stewart was at home.

Q. Was your brother Ward there? A. No, because I called home figuring he could pick me up at the station, but she said he was not home and she didn't know when he would be.

222

Q. Did you finally get home? A. I took a cab up there.

Q. When you got there what did you do after that? A. Mrs. Stewart told me it was visiting day that day, and she was glad I was here and we would go up to see her. She said she was sick and was taken to the hospital. She couldn't give me the final details, but she said she was in the hospital at that time.

Q. Did there come a time later—that afternoon you went to the hospital? A. Yes, we went to the hospital.

Q. When you got there did you find your sister? A. Yes.

Q. What was her condition when you found her at that time? A. She was a sick woman. She said, "Maude, are you here?" I said, "I got the message and I made it as soon as I could." [201] She said, "I don't think there was any need of concerning you about it." She said, "I think I am going to be all right." I said, "I am very glad to hear that."

Q. Did she say anything else that afternoon? A. No. I thought she was doing very nicely at that time.

Q. How long did you remain in Washington during that time? A. I stayed until Sunday.

Q. Did you go back to the hospital in the meantime? A. Yes.

Q. Who went with you on that occasion? A. Mrs. Walker, my cousin, and my brother, Ward.

Q. When you got to the hospital what condition did you find your sister in on that day? A. Well, getting to the hospital that day, going up the stairs, I can clearly recall I met Mrs. Yates. She said, "I am very glad to see you all. Your sister is crying and calling for you." So we three rushed to the room. We walked in the room. She looked up and she said, "Celie, I want you to take me home."

Q. Who was Celie? A. That was Mrs. Walker. She said, "Right now. Wrap me in a blanket right now and take me home in Duck's car, right now."

Q. Was that the nickname of your brother? A. Yes. He was right with us. I said, "We cannot remove you unless we have some permission." I looked around and I said, "Where can we find a doctor? We have to find out something." So then I went back to her [202] and started to rub her back. I said, "What is the trouble?" She said, "I don't get any attention"—well, I don't care to go into that part right now. I said, "We will go and look for a doctor." So we came out, my brother Ward, my cousin Mrs. Walker, and myself. We had to go down to the information desk in the Gallinger Hospital.

Q. Did the three of you go down there? A. All three went together.

227 Q. Did your brother Ward at that time object to your going down there? A. He never said a word. He went right with us. At that time he seemed to be trying to help us. Of course, I didn't know anything about the hospital, so we happened to cross a doctor on the floor and I asked about it. He said, "Oh, yes, I remember her very clearly. She was in my medical ward at one time." He said, "Dr. Cake is the man in attendance." I said, "Where can we reach Dr. Cake?" He said, "He is not here on Sundays," and he jotted down his hours in the hospital. He said, "You can reach him tomorrow at these hours." We went back upstairs and we told her what we were trying to do, that we were trying to do the best we could for her. I told her that myself, and at that time there was not a doctor available. I couldn't get one to help her. So she was very well satisfied. She said, "I know you will try." So, we consoled her very well, and we left her.

Q. When was your next time at the hospital? A. The next time at the hospital was on a Monday night.

228 Q. The following Monday night? [203] A. This was on Sunday. On Monday morning—do you want me to tell the whole story?

Q. That is right. A. Well, on Monday morning I contacted Dr. Cake over the telephone. He said, "Yes, she is sick, and I myself cannot release her. You will have to get in touch with Mrs. Sweeney," I think he said, at the clinic. So I called Mrs. Sweeney at that clinic and she told me I would have to come in to see her. Of course, I didn't know where the clinic was so I called Mrs. Walker and asked her would she help me to find Mrs. Sweeney.

Q. Did you find her? A. We found her. She said the only person that could release her is Dr. Seckinger, I

believe his name is. I asked where he could be located. She said, "I will try to make an appointment for you." She went back in her room and came back and said she had made an appointment and he could be seen at that time. So we saw him at that time. Dr. Seckinger heard my story and what my sister had, and he told me, he said, "Yes, you can have your sister." I asked him when I could have her. He said, "Get in touch with the clinic; Mrs. Sweeney will let you know." The next day I called Mrs. Sweeney. Mrs. Sweeney said, "I will have to get a nurse out there where you are going to keep her to inspect the place before I can let you have her." So, on Wednesday, between 12 and 1, the District Nurse came out and inspected the room. I had the room for my sister—I had made the preparations for the room myself.

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Q. Did it pass inspection? A. It did. She said it was excellent.

Q. After that, what happened? [204] A. Before she left, she O K'd the room. She said, "Don't let friends tire your patient." She said, "She will have lots of friends," and she said, "Let them stay here about three minutes or so, and by all means don't let them tire your patient." That was her words. She walked to the head of the stairs and called Miss Sweeney, and told her she O K'd the situation and the room.

231

Q. As a result of that, your sister was released? A. Yes. She told me, "You can get her at any time you want her."

Q. Who brought her home? A. Ryan's ambulance.

Q. After you got her home, who looked after your sister? A. I did.

Q. You heard your brothers and nieces testify that you have denied them the right to see your sister. I ask you point blank did you ever deny them the right to see her? A. Absolutely not.

Q. As a matter of fact, did they ever see her? A. Everyone that came in that house saw my sister. One

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Caveatee's Witness, Maude Duckett, Direct

of my nephews came on a Sunday. He didn't want to go up and I made him go up and speak to her.

Q. What is his name? A. Francis Duckett. Joe Duckett's son.

Q. You heard the one from out in Maryland? A. That is Pious Duckett.

Q. What have you to say about his testimony? A. Pious saw my sister because he promised her a chicken by his wife and she brought the chicken a few days later.

[205] Q. You recall when he testified in court before?

A. Yes.

233

Q. Do you recall what he said at that time? A. He said he didn't pay me no mind.

[206] The Court: Now, I think your question must be a little more specific than you have stated it. Will you read the question that was objected to, Mr. Reporter?

The Reporter (reading): "Q. Do you recall what he said at that time?"

The Court: Well, she can state whether she recalls the testimony, yes or no. Do you recall the testimony?

234

The Witness: Of my brother, Pious?

[207] The Court: Yes.

The Witness: Yes, I do.

The Court: All right.

By Mr. Dodson:

Q. You heard his testimony here yesterday? A. Yes, I did.

Q. Now, what was his testimony with respect to whether he had seen his sister after she was carried home at the trial we had before this one? A. He stated he came in and I said he should not see her, but he didn't pay me any mind, he just went on upstairs and seen her anyway. That is what he said before.

Q. At the time you saw your sister in the hospital, what was her mental condition, Miss Duckett? A. I thought it was very good.

Q. Was there any difficulty in carrying on a conversation with her? A. Oh, no.

Q. Did you ever at any time see her in a coma? A. Oh, no. No, truthfully, no.

Q. After she was carried home, how much time did you spend with her up until the time she died? A. I gave my sister 24-hour service. I just don't know how many days she was home exactly.

236

Q. During all that time, did you ever see her in a coma? A. No.

Q. Was there ever a time when she didn't recognize you? A. By all means, no. She knew me at all times.

Q. Tell us which members of the family who testified here saw your sister at home? [208] A. Mrs. Brown—Janie Brown, a niece of mine, saw her, and the sister-in-law, Mrs. Janie Duckett, that stayed with me for the two weeks from the time I brought her home.

Q. Was your other sister home at that time—Mary Stewart? A. No, she was not there. Mrs. Stewart was in the country. She left before I brought my sister home.

Q. She was not there one week? A. No, she wasn't there at all during the illness of my sister at home. 237

Q. Your sister-in-law was there? A. My sister-in-law.

Q. What is her name? A. Janie Duckett.

Q. Did she see your sister? A. Oh, yes. Occasionally she would call her upstairs, and she would talk to her.

Q. Did you ever tell her she couldn't see her? A. Never.

Q. Which other brothers and sisters? A. Ward would see her when I would ask him to go up and speak to her.

Q. What do you mean by that? A. He didn't go near her unless I asked him to. I made the comment to several others. I said, "Why, he wouldn't speak to his sister."

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Caveatee's Witness, Maude Duckett, Direct

Q. Who else? A. My nephew, Bill Duckett, came in, and he went up to see her.

[209] Q. In that connection, do you remember his testimony when he was in court before? A. Yes.

Q. You heard his testimony yesterday? A. Yes, sir.

Q. On that occasion when he was in court before, what did he say with respect to whether he had seen her at home? A. He said he didn't see her because I said I would lose my license.

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Q. Your brother from Bowie, Maryland— A. Joe Duckett.

Q. Did he see her at home? A. Yes, he did.

Q. Did you ever tell him he couldn't see her? A. No. He came on Saturday previous to the Saturday she died, and he stayed a good bit of the afternoon, and he went up to see her and talked to her. I can even recall what he said when he came down.

Q. What did he say? A. "How do her finances stand?"

Q. "How do her finances stand?" That was the question he asked you? A. I said, "I am not here for that, Joe. I am sorry. I am here trying to get her well."

240

Q. On the day that the will was drawn, as a matter of fact, did you know that the will was to be drawn? A. No, I didn't.

Q. Did you know Mr. Gray prior to that? A. No, I didn't.

[210] Q. When did you meet Mr. Gray for the first time? A. The first time I met Mr. Gray was on Friday, the 25th.

Q. Where did you meet him? A. I met him at Mrs. Diggs' home. I met him on the stairway. I was going down the stairway and I met Mrs. Walker and this gentleman coming up. She introduced me.

Q. That was the first knowledge you had? A. That was the first knowledge I had.

Q. Did you ever say anything to him? A. I said to

him, "What is this?" He said, "Business." I said, "Don't stay too long and tire my patient," and came on down the steps.

Q. Did you inquire the nature of his business? A. No, I didn't, because my sister never allowed me to know anything like that. Even from a child up she left me strictly on my own.

Q. Was there any other relationship between you and your sister? A. She was my godmother.

Q. What had been the relationship between the two of you through the years? A. Very fine. We loved each other.

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Q. When it was your custom to come to Washington, where did you stop? A. At my sister's at Mrs. Diggs'.

Q. Now, on the particular Friday that this will was drawn, what was your sister's mental condition that day? A. Very good.

[211] Q. In your opinion, did she know the nature and extent of her property? A. Oh, she would know everything. She never made any indication that she didn't know anything. She always knew what she wanted. She always asked for what she wanted—she demanded what she wanted from me.

Q. Did she always get what she wanted? A. No. As a nurse I had to give her what I thought was good for her.

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Q. During this period she was home, did the priest come to see her? A. Yes. Father Troach came in on Friday. He told me he was coming on Saturday morning to give communion. So I asked him to go up. He said, "If she is sleeping, I won't disturb her." I said, "You had better go up because if she finds out you were here and she didn't see you, she will be disappointed." So he went up on Friday afternoon and told her he would be there on Saturday morning.

Q. Did you remain in the room while he gave her com-

munion? A. Oh, yes. I had to be there. Mrs. Walker and I were kneeling at the time he administered communion.

Q. What time was that? A. A little after eight. He was a little late. He was due at eight, and I will say he got there at 8:15.

Q. Did the priest talk with her after he gave her communion? A. He said he didn't want to take her confession because he had it before. He said, after he had given her communion, "Mary, now pray for me. You are in position to pray for me now." [212] She said, "Yes, Father, I will." He said, "Thank you." He told us to get up off our knees. We had been on our knees long enough. Then he left the room.

245

Q. At any time during the entire time you were waiting on your sister did you ever exert any kind of undue influence on her? A. No. It was impossible to do it to her.

Q. Did you ever exert any fraud upon her? A. No, indeed, no.

Q. What was your first knowledge as to the contents of the will? When did you get first knowledge as to its contents? A. I didn't know until I heard it read.

246

Q. When was that? A. That was the day after the funeral. I didn't know there was to be a will until Mrs. Walker said that Mrs. Diggs' attorney would be there to talk to us. She didn't say anything concerning a will at that time.

Q. The first time you knew anything of the contents of the will was when Mr. Gray read it? A. Yes, when Mr. Gray read it.

Q. Did you pay for Mr. Gray's services for her? A. No, I was not taking care of the business.

Q. Did you have anything to do with the procurement of Mr. Gray? A. Oh, no. No, indeed.

Q. Did you ever object to your brother Pious seeing Mrs. Diggs? A. Never.

Q. Did you ever object to Joseph seeing her? [213]
A. No, I never did.

Mr. Dodson: I think that is all.

Cross Examination by Mr. Murphy:

Q. Miss Duckett, do you know whether or not Mr. Gray has as yet ever been paid for his services for drawing the will? A. I don't know. I didn't ask him.

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Q. Mr. Dodson asked you about the first time you knew of the contents of the will. When was the first time you ever knew there was a will? A. When Mr. Gray came on the day after the funeral.

Q. The day after the funeral? A. Yes—I mean after the funeral—that afternoon.

Q. The same day of the funeral, but after the funeral took place? A. That is right.

Q. Had you ever discussed any kind of a will at all with your Aunt Mary? A. No, I hadn't.

Q. Did you ever discuss it with Mrs. Walker? A. Not with anyone.

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Q. You remember quite well the testimony of Pious and Joseph at the last trial? A. Clearly.

Q. Do you remember any witnesses at the last trial testifying that you would not permit them to see your sister, that you told them if you did permit them to see your sister you would lose your license as a nurse; that that was what the doctor had told you? [214] A. That is what they said, yes. I admit I knew what they said.

Q. That is what I am asking you. A. Oh, yes. I remember.

Q. Do you remember any witnesses testifying to that? A. Pious said he walked past me, didn't pay me no mind, went on up anyway.

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Caveatee's Witness, Maude Duckett, Cross

Q. Do you remember any witnesses testifying at the last trial? A. Will you make yourself a little more specific?

Q. You remember the last trial of this case? A. Yes.

Q. Do you remember any witness at that time testifying that you had told them they couldn't see Mary, and the reason that they couldn't see her was that the doctor had given you instructions that if you permitted them to see Mary that you would lose your license as a practicing nurse? A. That is what they said.

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Q. That is what who said? A. The witnesses. You didn't name them.

Q. I am asking you if you know of any witnesses? A. I guess they all walked in and made the same answer.

Q. They all did? A. Yes.

Q. Did Pious? A. I remember him very definitely.

Q. Did Pious testify— A. Pious testified before when he came in that I said he couldn't see my sister. He said he didn't pay me no mind, he just walked on past me and went on up to see her. He didn't say anything about my losing my license.

[215] Q. Pious didn't? A. Pious didn't.

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Q. Did Joseph? A. Joseph said that I said he couldn't see her. He didn't say anything about a license. He said he walked on up. That was his statement then.

Q. That is two witnesses you remember definitely what they said? A. Yes, they were brothers and I was talking to them.

Q. Do you remember what the other witnesses said? A. Some of the witnesses said they walked in and I said that. I still remember some of the relatives said that.

Q. Had you ever done anything for your sister, Mary, before this sickness? Had you ever attended her during any illness before? A. Sure. I have been here when she had a sprained ankle. I was here taking care of that.

Q. How long ago was that? A. I think you remember

the time, when you took my brother Ward and I out to the country. That was the first time you met me. You were in the car, and we went out there. It was snowing that day. I can clearly remember it.

Q. You did take care of her at that time for a sprained ankle? A. Yes.

Q. You say that all of these members of the family and so on—you didn't keep them away from her? [216]

A. Not one of them. Not one.

Q. They were all allowed to go and see her? A. Absolutely.

Q. Janie Duckett? A. That is right.

Q. Your sister-in-law? A. That is right.

Q. You heard her testimony yesterday? A. Yes, I did.

Q. Was she there at the house at different times while Mary was sick while you were there? A. Janie Duckett, my sister-in-law, I went for her on Saturday morning, when I brought my sister from the hospital. She remained the two weeks that my sister was home.

Q. She remained there at the house with you? A. Yes. She went away at night, and came in the day. She cooked and cleaned up.

Q. Was anybody else there at the house besides you and Janie? A. My brother Ward, and nieces came in occasionally at night, different nieces came in and stayed at night.

Q. How about your sister, Virginia Stone? Was she there at any time? A. She came one Saturday around five o'clock and stayed until 10 that evening.

Q. Is that all? A. That is all.

Q. How about little Janie Brown? [217] A. Little Janie Brown, she used to come in the evenings. She used to come up and sit there, she and her husband, sometimes. They never did anything but just come and be in the house in case I wanted something.

Q. Do you recall Mrs. Walker's testimony at the last

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Caveatee's Witness, Maude Duckett, Re-cross

trial? A. I don't know whether I can recall all of that.

Q. Do you remember Mrs. Walker saying anything about using the telephone at Mrs. Diggs' home, or going around to her own home? A. Yes, I can remember that much of it. She refreshed her memory when she spoke about it here.

Q. Did she say at that time she used the phone at Mrs. Diggs' home or at her own home? A. At her own home. That is what she said.

Mr. Murphy: That is all.

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Re-direct Examination by Mr. Dodson:

Q. Miss Duckett, there has been some question about your sister's condition on Friday. Did anybody expect her to die? A. No.

Q. Did she, herself, expect to die? A. No. We were making plans to go to Atlantic City in a few days.

Q. Had the doctor told you that the end was imminent? A. No. The doctor was there on Saturday morning. She was doing so fine he changed her medicine.

Mr. Dodson: That is all.

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[218] Re-cross Examination by Mr. Murphy:

Q. On the Thursday before she died, do you recall coming downstairs into the kitchen and telling either Janie Duckett or Virginia Stone that your sister was going to die? A. Virginia Stone wasn't there. She only came once. That was on Saturday.

Q. Was Mary Stewart there? A. No. Mary Stewart wasn't there the whole time after I brought her home. She didn't come back until after she was dead. She left before I brought her home and didn't return until after Mrs. Diggs was dead.

Q. Do you recall telling anyone within four or five days before she died that she was going to die and you were crying? A. No, I couldn't have did a thing like that, because I didn't believe it.

Q. You heard Janie Brown's testimony yesterday about you coming out of the bedroom when Mr. Gray and Mrs. Walker went up there, and you came downstairs and laughed and said they had chased you out of the room. Is that true? A. No. It was not true, because I never say things like that on duty.

Q. In the beginning of your testimony, you talked about getting permission to take Mary home. You are a graduate nurse? [219] A. That is right. 260

Q. Of course, you know you have to take certain precautions under the Health Department? A. No question about that.

Q. To take care of a tubercular case? A. That is right.

Q. That is what you did in this case? A. I took the orders from the district nurse.

Q. To keep the room in condition for a tubercular case? A. That is right.

Thereupon, [220] JOSEPH G. CRUNKILTON was called as a witness for and on behalf of the caveatee, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. Will you state your full name? A. Joseph G. Crunkilton.

Q. What is your occupation? A. Legal advisor of the Retirement Division, Civil Service Commission.

Q. Are you here in response to a certain subpoena duces tecum? A. I am.

262 *Caveatee's Witness, Joseph G. Crunkilton, Direct*

Q. Have you brought with you the records that the subpoena called for? A. I have the information taken from the record. The original record has been micro-filmed and is no longer in existence.

Q. The original record has been destroyed? A. Yes.

Q. Has the information that you have here—is that the information that has been taken from the micro-film?

A. I took it from the micro-film myself.

Q. Is it possible to bring the micro-film here in court?

263 [221] A. It would be quite difficult, because it is quite a large machine that it would take to throw the film on the screen.

Q. Have you then placed on a sheet of paper the information called for in the subpoena? A. I have made a note of that.

Mr. Murphy: I have no objections to it.

Mr. Dodson: All right. Thank you.

By Mr. Dodson:

264 Q. Will you read the information you have taken from the micro-film? A. Mary Frances Diggs, laborer, Interior Department, Ward Augustus Duckett designated as beneficiary under the Civil Service Retirement Act March 20, 1935.

Q. Was that the date of his designation? A. That is right, yes.

Q. March 20, 1935? A. 1935. That is the date she designated him to receive the amount due from this fund upon her death. By check No. 5137043 dated July 2, 1941, the beneficiary was paid \$729.08, check being mailed to 314 Kentucky Avenue, Southeast, Washington, D. C.

Q. That amount is \$729.08? A. That is correct.

[230]

Proceedings

Thereupon, ELLA ALBERTA YATES was called as a witness for and on behalf of the caveatee, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. State your full name. A. Ella Alberta Yates.

Q. Where do you live? A. 122 Sixteenth Street, Southeast.

Q. During her lifetime, did you know Mrs. Mary Frances Diggs? A. Yes, I did. 266

[231] Q. How long had you known her? A. Oh, quite a number of years.

Q. During her last illness in March of 1941, did you have occasion to see her when she was at the hospital? A. Yes, I did.

Q. How many times did you visit with her at the hospital? A. Twice.

Q. On those occasions did you know whether she recognized you? A. She certainly did.

Q. Did she talk to you? A. Yes, she asked me how I felt.

Q. On the second occasion that you went there, with respect to the time that she was taken away from the hospital, when was that? A. That was the next Sunday. 267

Q. The following Sunday? A. Yes.

Q. On that occasion did you see Mrs. Diggs? A. Yes, I did.

Q. Did she recognize you on that Sunday? A. Yes, she did.

[232] Q. During the two times you visited her there, was she ever in a coma? A. No.

Q. Was there ever any occasion during those two times that she didn't recognize you thoroughly? A. No, she recognized me both times I was there.

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Caveatee's Witness, Ella Alberta Yates, Direct

Q. From your observation of her on those two occasions, and from your talk with her, what would you say was her mental condition on those two occasions? A. I didn't see anything wrong with her mental condition.

Q. Would you say her mind was perfectly clear? A. Yes.

Q. On the last occasion of the Sunday you were there, did you see any of her relatives there on that occasion?

269 A. Yes, they came in. I was about the first one that got there, a couple of friends and I were the first. I went in the room to see her, and she was crying. I said, "What is the matter?" She said, "I want to go home." I said, "There isn't anyone here to take you home." She said, "Where is Ward and Celie?" I said, "They haven't got here yet." She said, "When they come tell them I want them to take me home right now." I said, "Well, I will tell them if they come." So when they came, I told them. Then I never went back in the room any more.

Q. Who came as you went out of the room? Which of her brothers and sisters? A. Ward came in.

Q. Who else? A. Cecelia.

270 Q. Was anybody else there? A. I think Maude was with them.

Q. Did you tell Ward what— A. Yes, I did.

Q. What did you tell him? A. I told him what Mrs. Diggs had said, that she wanted to go home.

Q. What did he say to that? A. Well, he just went on in the room.

Q. Did he say anything about that? A. No, he didn't discuss anything with me. He just went in the room to see her.

Q. Did he say anything about taking her home, or whether he could take her home? A. No, he didn't. He didn't say anything to me about that.

Q. That was on the Sunday— A. That was the last time I seen her alive.

*Caveatee's Witness, Reverend Louis Gerard Troach,
Direct*

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[234] Thereupon, REVEREND LOUIS GERARD TROACH was called as a witness for and on behalf on the caveatee, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Dodson:

Q. State your full name, Father. A. Louis Gerard Troach.

Q. I believe that you are a Catholic priest?

[235] Q. In the months of March and April, 1941, where were you assigned? A. St. Cyprian's, 13th and C Streets, Southeast.

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Q. What was your position there? A. Assistant pastor.

Q. In your relationship as assistant pastor, did you come to know one Mary Frances Diggs? A. I did.

Q. How long were you assistant pastor at St. Cyprian's? A. From the year 1935 to October, 1943.

Q. During the period of your service at St. Cyprian's, did you know, up until her death, Mary Frances Diggs? A. Yes.

Q. She was one of your parishioners? A. That is right.

[236] Q. Did you visit her in her home prior to her death? A. Oh, I did that.

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Q. How many times did you visit her between the dates of April 12th and 26th? A. That has been such a long time ago, and I have had many cases since then. I couldn't say.

Q. Was it more than once? A. Oh, more than once.

Q. Would you say more than three times? A. I might even say that, but I wouldn't be sure.

Q. On the occasion that you visited her, did she recognize you? A. Oh, yes.

Q. Would she converse with you? A. Well, she did to some extent. She was very sick the first time I saw her, in bed, and being very sick, I don't think she was inclined to talk much.

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Caveatee's Witness, Maude Duckett, Cross

Q. Did you get intelligible answers from her from the questions you put to her? A. I know they were intelligible enough for her to receive the sacraments.

[242] Thereupon, MAUDE DUCKETT, the caveatee, was recalled as a witness on her own behalf, and having been previously duly sworn, was examined, and testified further as follows:

Further Direct Examination by Mr. Dodson:

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Q. Miss Duckett, you heard Mrs. Janie Duckett testified the day she did testify? A. Yes, I did.

Q. That they were certain low conversations on the day that the will was drawn, Friday, that you had with Mrs. Walker. Did you have any low conversations at all out of the ordinary with Mrs. Walker that day? A. No, I had no low or secret conversations with Mrs. Walker.

Q. Did you have any low conversations? A. No, I did not. As a rule, I don't holler when I am talking, when I am on a case. I didn't have any low conversations.

Mr. Dodson: That is all.

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Further Cross Examination by Mr. Murphy:

Q. I think I asked you yesterday, Maude, I want to be sure; when was the first time you learned that your aunt had made a will? [243] A. I didn't know it until Mr. Gray came after the funeral.

Q. After the funeral? A. After the funeral.

Q. Did you see Mr. Gray when he came in the house? A. I was coming downstairs and I met him on the stairway.

Mr. Murphy: I think that is what you testified to yesterday. I just wanted to be sure. Thank you.

(The witness left the stand.)

*Caveatee's Witness, Cecelia Walker, Direct
Charge to the Jury*

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Thereupon, CECELIA WALKER was recalled as a witness for and on behalf of the caveatee, and having been previously duly sworn, was examined and testified as follows:

Further Direct Examination by Mr. Dodson:

Q. You heard the testimony of Mrs. Janie Duckett the day she testified? A. Yes, I did.

Q. She testified that on the day the will was drawn you had certain low conversations with Miss Maude Duckett. Did you have on that day any low conversations with her? A. I certainly did not. On that occasion, or any other occasion.

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[280]

Charge to the Jury.

The Court (MORRIS, J.): Ladies and Gentlemen of the jury: As you have been told, this case raises a question as to the validity of a will. Now the procedure that we have in this jurisdiction is that those issues may be settled by the verdict of a jury. The form is somewhat different from that of the ordinary civil case, in that the issues that are framed are submitted to the jury and they make answers, yes or no, to the questions propounded to the jury.

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As was stated, the issues as originally framed were seven, but counsel have agreed that the only controverted issues here that need to be settled by the jury are set forth in three issues, numbers 1, 2 and 7. Now, as a matter of fact, they are really settled by the answer to two of the questions, because according to the way you answer issues No. 2 and No. 7 will depend your answer as to issue No. 1.

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Charge to the Jury

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Those issues are these: One, was the paper writing bearing date 25th day of April, 1941, and filed herein the last will and testament of decedent herein? Now, the answer to that question will depend on how you answer No. 2 and No. 7. Two, was the decedent here at the time of the making and subscribing or the acknowledging by her of the said paper writing of sound mind and memory and capable of executing a valid deed or contract? No. 7, was the subscription to said paper writing and the publication thereof by her procured by fraud, coercion, misrepresentation, undue influence and pretension, exercised upon her by said person or persons unknown to the subscriber?

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Now, if you answer Question No. 2, that is as to the soundness of mind, was the testator of sound mind, as I have de [281] scribed, if you answer that in the affirmative—that she was of sound mind—and you answer No. 7 in the negative, that is, no undue influence was exercised upon her, then your answer to No. 1 would be, yes, it is her last will and testament. If you answer No. 2 in the negative, that is, that she was not of sound mind, then your answer to No. 1 would be in the negative. If you answer No. 2 in the affirmative, that she was of sound mind and you answer No. 7 in the affirmative, that is undue influence was exercised upon her, then your answer to No. 1 would be in the negative, because the will would not be valid if undue influence had been exercised.

Now if there is any question in your mind when you come to consider the case as to what I meant by what I have just said, you can ask for the bailiff and I will try to explain it a little more clearly. This slip will be given you and you will indicate your answers thereon by writing, the foreman will write thereon, yes or no, according to your answer to these three issues, and the foreman will sign it.

Now, there are certain principles of law, most of which have probably been alluded to in the arguments of counsel, that I want to explain to you, even though it will require some repetition, because you should have in mind some explanation of what is meant by these terms. Soundness of mind as it applies to the making of a will, that is, testamentary capacity, is the technical term that is generally used. You don't have to worry about the technical term, but you must understand what is meant by it. You must also understand what is meant by undue influence, as the term has been used, so that you may intelligently apply the law respecting those two matters to the facts [282] as you find the facts to be after considering the evidence.

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Now, you are instructed as a matter of law that the expression "sound and disposing mind, capable of executing a valid deed or contract," when used with respect to an attempt to dispose of property by last will and testament means that the decedent must have had at the time of the execution of the instrument sufficient mental capacity to dispose of her property or estate with judgment and understanding, considering the nature and character of the estate, as well as the relative claims of the different persons who would be the natural objects of her bounty.

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Now, undue influence, which I will try to explain to you a little more clearly presently, is a fact which may be established by circumstances, and it is not necessary that such facts be established by direct proof—direct evidence—if the circumstances that are proved show, to the degree of proof that I shall discuss with you, that there was undue influence.

You are instructed that in order to make a valid will it is not necessary that the testator should be endowed with a high order of intellect, or even an intellect measuring up to the ordinary standards of mankind. Nor is it necessary to the making of a valid will that the party

Charge to the Jury

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should have a perfect memory and that his mind should be wholly unimpaired by age, sickness or other infirmities. If a party possesses memory and mind enough to know what property he owns and desires to dispose of and the person or persons to whom he intends to give it, and generally, fully understands his purposes and the business he is engaged in, in so disposing of his property, he is, in law, of sound and disposing mind. [283] The will of a person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show only a possibility of suspicion of undue influence. The expressed intentions of the testator should not be thwarted without clear reason therefor.

The jury is instructed that the right to make a will disposing of property in accordance with one's desires, even to gratifying partialities or prejudices, is a privilege secured by the law.

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The jury is instructed that if the defendant hoped to be or asked to be and was rewarded for her kindness, it does not follow that she used undue influence. Undue influence involves improper means and practices. Influence gained by kindness and affection will not be regarded as undue, if no imposition or fraud be practiced, even though it induced the testator to make an unequal disposition of his property in favor of those who have contributed to his comfort, if such disposition is voluntarily made. Confidential relations existing between the testator and the beneficiary do not alone furnish any presumption of undue influence. One has a right to influence another to make a will in his favor. He may lay his claims for preferment before the testator. These claims may be based on kinship or friendship or kindness or service or need or any other sentimental or material consideration. One can use argument and persuasion, so long as it is fair and honest and does not go to an oppressive degree where becomes coercive.

Charge to the Jury

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Now, let me supplement what I have said, so that I think it will be clearly in your mind. As I have said, a person may discuss with testator the matter of the disposition that [284] testator's property, may ask the testator to give it to that person, may by fair and legitimate argument urge the testator to give it and that in itself would not necessarily be undue influence. Of course, it depends on the mentality of the person, to some extent, as to what would be undue influence and what would not be. I mean a person in good strong, vigorous, mind and condition, could be importuned with less danger of it being undue influence than one that was not of such strong mentality. The critical thing is this: Whether or not any influence that is used, if any is used, as to whether it is undue or not, is whether it has overcome the will of the person making the bequest or the devise.

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If the person using the influence has brought about something that the person giving it would not voluntarily have done, then it is undue influence. If it has not done that and there has been no misrepresentation or fraud, then it is not undue influence. That is what marks the line between whether or not the person, as a result of argument or discussion or acts, has made up his mind to do that thing, because that is what he wanted to do. Then it is their will, but if they do it without having made up their own mind voluntarily but have been pressed into something that they would not have otherwise done, and it was not the intention of their own will, then it is not their valid act.

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Now, the burden of proof in a case such as this, with respect to the issues that are here submitted to you is upon the plaintiff, that is, the caveator, in this case, the party that challenges the validity of the will. Now, a person is presumed to be of sound mind ordinarily. Therefore, to find that [285] a person is not of sound mind, the party challenging the soundness of mind must by

evidence show that the mind of the testator was not sound and that the party did not have testamentary capacity. That must be done by evidence which satisfies you of that condition, by fair preponderance of the evidence. That means that the evidence of the unsoundness of mind must be more convincing and more satisfactory as to its truth to you than the evidence to the contrary. Of course, if the evidence does not weigh as heavy on that side as the evidence as to the soundness of mind, it does not preponderate. If it weighs equally it does not preponderate, but if it is more convincing and more satisfying to your mind that the testator was of unsound mind, then it can be said to preponderate and it is that degree of proof that is required before you can find that the testator was not of sound mind and did not have testamentary capacity.

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Now, as to the proof as to undue influence, the burden there is also on the party challenging the validity of the will on the ground it was the result of undue influence. Now, of course, if a person has no sound mind there isn't any question of undue influence, I mean there has to be soundness of mind to some extent before there can be undue influence, because the will would be invalid for want of testamentary capacity if there was no soundness of mind, but the degree of proof which is upon the plaintiff in showing that there was undue influence exercised upon the mind of the testator is that proof showing that to be so must be clear, strong and convincing. You must be satisfied from the evidence that undue influence was used to bring about the execution of the will before you can find that [286] such was the case.

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Now, I have tried to tell you what the issues are, and what the principles of law respecting them are, and the degree of proof required to establish them. Now, having those things in mind it becomes your task to determine what the facts in the case are and to answer the

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issues in accordance with your conclusions as to such facts in the light of the law as I have stated it to you. Now, in doing that, it is your duty to weigh the evidence in the case where it is conflicting, to determine which part of the evidence you accept as true and which part you reject.

In doing that you will take, as I said during the course of the trial, your recollection of the evidence and should that differ from the recollection of counsel or should it differ from that of the Court, where I have had occasion to refer to my recollection, you will take your recollection and not that of counsel nor of the Court. You will determine the credibility of the witnesses, that is, you will determine what weight and what credence you will give to the testimony of any witness. In doing that you may call to your aid certain guides which the law out of long experience recognizes to be valuable and helpful, though perhaps not infallible guides or aids. You may use them to such extent as you should and to such extent as you think would be helpful to you.

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For instance, in weighing the testimony of any witness you may take into consideration the interest if any which such witness has in the outcome of the trial, and consider and determine whether that interest has or has not covered or affected the testimony of such witness. If so, to what extent? You may take [287] into consideration the opportunity or lack of opportunity of the witness to know the matters about which such witness has testified, and the capacity or the ability of the witness to actually and accurately observe the matters such witness has testified to, to have accurately recollected and to have accurately related what such witness has testified to, or the contrary. You may take into consideration the reasonableness or unreasonableness, of probability or improbability of what the witness has testified to, in helping you to determine whether to accept

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as true what the witness has said. You may take into consideration the appearance and demeanor of the witness on the stand, which is simply another way of saying that you may consider, as all of us do in our ordinary affairs, whether or not the person we are listening to looks and acts as if that person is fully, frankly, truthfully and honestly relating what that witness knows, or the contrary.

If you believe that it has been shown by any evidence in the case that any witness is biased or prejudiced, either for or against either party to the cause, you may consider and determine whether or not such bias or prejudice has or has not covered or affected the testimony of such witness; and if so, to what extent. If you believe any witness has testified falsely concerning any material matter or matters as to which the witness could not honestly have been mistaken, you have a right to disregard entirely all that that witness has testified to, on the principle that a witness who testifies falsely to one material matter may testify falsely to others or all. So, I say you have a right to reject the testimony of such witness, but you are not required to do so. You may, if in your good, sound judgment and discretion think you should accept as true [288] part of what the witness has testified to if you believe it to be true, even though you do reject as false and untrue other parts of the testimony of such witness. There is an illustration of the discretion and judgment that the law leaves to your good, sound discretion as to what weight to give the testimony of such a witness.

You may, as I have already had occasion to say, I believe, make fair inferences and conclusions from facts which have been established by the evidence in the case. That is, where a circumstance or fact has been established by the evidence you may make such reasonable conclusion or inference therefrom as an ordinarily reasonable man

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would logically make from such fact that is established in helping you to arrive at the ultimate facts which you are to decide in this case, but you must bear in mind that you may not speculate or guess about such ultimate facts. You must base your conclusions on evidence that is satisfying to you as to the truth of the fact or circumstances and from which your conclusion and inference is reasonable.

Now, if after weighing all the evidence in this case you believe it has been shown by fair preponderance of the evidence that the testator named in this case—the person making the will that is here challenged—was at the time of making, subscribing and acknowledging by her of said paper writing of sound mind and memory, capable of executing a valid deed or contract, you should answer Issue No. 2 in the affirmative. If it has been established by fair preponderance of the evidence that such testator was not of sound mind and memory capable of executing a valid deed or contract, then you should answer No. 2 in the negative. If you do answer No. 2 in the affirmative, [289] you will then proceed to consider No. 7, and if you find that it has been shown by evidence which is clear, strong and convincing that the testator subscribed and published the will here in question as a result of fraud, coercion, misrepresentation, undue influence and pretension exercised upon her by the said Maude Duckett or some other person or persons unknown to the subscriber, you would then answer No. 7 in the affirmative. Otherwise, you would answer No. 7 in the negative.

Now, if you do answer No. 2 in the negative, that is that the testator was not of sound mind at the time of making the will, you will thereupon answer No. 1 in the negative, that it is not a valid will. If you answer No. 2 in the affirmative—that is, that she was of sound mind, but you also answer No. 7 in the affirmative, that the

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will was procured by undue influence, then you will answer No. 1 in the negative, that it is not a valid will. If you answer No. 2 in the affirmative, that she was of sound mind and you answer No. 7 in the negative, that the will was not procured by undue influence, then you would answer No. 1 in the affirmative, that it was a valid will. Now, I believe in telling you what a preponderance of the evidence was, perhaps I did not tell you something that I intended to and should have, and that is, as I did say, a fair preponderance of the evidence is that which is more satisfying to you as to its truth, more convincing than the evidence to the contrary, and it does not necessarily depend upon the greater number of witnesses, nor the greater volume of testimony. It means just as I have said, that the evidence on that point is more convincing and satisfying to you than the evidence to the contrary.

Is there any instruction I have not given that it was [290] understood I would give, or any clarification of any that I have given?

Mr. Murphy: There is not, so far as I am concerned.

Mr. Dodson: I don't think there is.

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APPELLEES' BRIEF AND APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8782

MAUD DUCKETT, *Appellant*

vs.

WARD DUCKETT, EDWARD DUCKETT and
CLARENCE DUCKETT, *Appellees*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
HOLDING A PROBATE COURT

United States Court of Appeals
for the District of Columbia

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BRIEF FOR APPELLEES.

Counter-Statement of Case.

The appellant having filed as a brief in this case an almost verbatim copy of the brief she, as appellee, filed before this Court, in *Duckett v. Duckett*, 77 App. D. C. 303, decided in favor of appellees herein, and the appellant citing not one new case to this Court, the appellees deem it essential that a resume of the proceedings in this cause be set forth in chronological order.

On April 26, 1941, Mary Frances Diggs, a 60 year old woman, departed this life in the District of Columbia, leaving surviving her as her heirs at law and next of kin, twenty-two relatives, all being brothers and sisters or children of deceased brothers and sisters; that subsequent thereto a

paper writing bearing date on the 25th day of April, 1941, and purporting to be the last will and testament of said decedent was filed with the Register of Wills for the District of Columbia, and following that a petition was filed with said Register by Maud Duckett, a sister of said decedent and the party named as executrix and sole beneficiary under said alleged will, and appellant herein, being the defendant below, praying that said will be admitted to probate and record and that she be qualified as executrix thereof.

The appellees herein, being the plaintiffs below, and being a brother and two nephews, respectively, of said decedent, filed a petition for a caveat to said alleged will; that this was followed by the answer of caveatee; that subsequent thereto certain issues were framed and agreed to by both the appellant and the appellees and ordered by the District Court tried to a jury.

The case proceeded to trial and the jury found for appellant on the issue of testamentary capacity and the Court directed a verdict for appellant on the issues of fraud and undue influence. From the decree entered on the 18th day of December, 1941, the appellees herein appealed to this Court and this Court on March 15, 1943, in *Duckett v. Duckett, supra*, reversed the lower Court and remanded the case for a new trial on both the issues of "fraud and undue influence" and that of "testamentary capacity." A new trial was had and the jury found for appellant on the issue of testamentary capacity and for the appellees on the issues of fraud and undue influence and a decree denying probate of the alleged will was signed February 16, 1944, and from this decree the appellant now appeals to this Court.

It is apparent from the brief of appellant and the argument set forth therein that she relies on the one question of undue influence. In fact, appellant states in her "Summary

of Argument" that this appeal poses only one question, namely: "Undue Influence, whether the evidence in this case was sufficient to make out a case of undue influence which would invalidate the will." Appellees, therefore, confine their brief to the one question of "undue influence and fraud."

The evidence for the appellees on this question was to the following effect.

Mary Frances Diggs, the testatrix, during her lifetime had owned and resided at No. 314 Kentucky Avenue, Southeast, Washington, D. C.; that her brother Ward, one of the appellees herein, had made his home with her for thirty-six years and up until her death; that Ward had lived with Mary and her husband during his lifetime and when Mary's husband died more than ten years ago, she, Mary, had asked Ward to continue to make his home with her; and had said she wanted Ward to have the home when she died; that no other persons lived with them during all this time. There was a close family tie between every member of the family and they had all, with the exception of Maud, the appellant herein, paid frequent visits to Mary's home to see her; that these visits had continued up until Mary's death. Maud was a nurse and had lived out of the city for quite some years and had only paid annual visits to the home of Mary. There was no closer relationship or friendship between Mary and Maud than that which existed between Mary and other members of the family or even as much. All the members of the family excepting Maud came to see Mary during her illness at her home covering a period of two or three weeks before Mary, at the suggestion of her family physician, was moved to Galinger Hospital. Maud during this period was living in Philadelphia. While Mary was in the hospital, a period of three weeks, all members of the family excepting Maud called to see her on every visitors' day.

That Maud, after she had been notified of Mary's illness, came to Washington and immediately called at Gallinger Hospital and requested that Mary be taken home. Mary was taken home but not at her request and contrary to the advice of the doctors at the hospital and Maud was later admonished by Mary's family physician for bringing Mary home.

After Mary was brought home Maud took complete charge of her and when other members of the family called at Mary's home they were forbidden by Maud from seeing or conversing with Mary; Maud told them that she was acting under instructions and orders of the doctor and that she, Maud, would lose her license as a nurse if she permitted any of them to go into Mary's room. The doctor who had attended Mary testified that he had never given any such instructions to Maud.

During the last two weeks of Mary's life, spent at her home, there were other members of the family around all the time and that while they couldn't enter Mary's room they did do all the rest of the work in and about the same; they did the cooking, cleaning and other household duties.

The alleged will was drawn on April 25, 1941, just one day before Mary died, under unusual and secretive circumstances; that on the morning of April 25, 1941, there had been some secret conversations between Maud Duckett, the sole beneficiary under the will, and the party named executrix thereof, and Cecelia Walker, a cousin and close friend of appellant, one of the witnesses to the will, and that following this Cecelia Walker left Mary's home. There was a telephone in the house of testatrix yet this same Cecelia Walker left this house and went around the corner to her own home and there telephoned the lawyer to come out to prepare the will. That the only person there other than Maud, Cecelia Walker and the lawyer, was a sister Janie Duckett who at the time was busy in the kitchen. When the lawyer

arrived he was met at the door by Cecelia Walker and ushered upstairs to the sick room. Mr. Gray, the attorney who prepared the will, testified that after talking to testatrix alone in the bedroom and taking some notes he went downstairs to the dining room and drew the will then returned to the sick room upstairs and read it to the testatrix who was still alone. He then called Mrs. Walker who came up to the room and together with Mr. Gray was a witness to said will. Mr. Gray also testified that he was introduced by Cecelia Walker to Mrs. Maud Duckett as they passed on the stairs he going up and she coming down. Mrs. Walker testified she didn't pass anyone on the stairs, that she took Mr. Gray to Mrs. Diggs' room and she remained there during the conversation between Mr. Gray and Mrs. Diggs and it was there Mr. Gray prepared the will in her presence and she didn't know where Mrs. Maud Duckett was during this time. Mrs. Janie Duckett said Maud came down stairs laughing and said "they drove me out." She also said Mr. Gray never came down to the dining room. The will was taken away by the lawyer and was kept secret until the day of the funeral and after the burial of decedent herein.

The testatrix was a very sick and feeble old woman who had been suffering with pulmonary tuberculosis for quite some time; the testimony of all the witnesses for the appellees who had seen the decedent at the hospital was to the effect that she, only with difficulty, was able to recognize them. They said that she was not at any time able to carry on any conversation. Father Troach, a Catholic Priest, a witness for the appellant, testified that he had seen Mary at her home on two or three occasions shortly before her death and she was only able to answer questions he put to her in monosyllables and he would only stay a few minutes with her because she was a very sick woman. When cross-examined by the appellees he said he annointed Mary the day before she died and explained this was done when in the

judgment of the priest a person was in danger of death from a wound or otherwise. The will left everything to appellant, "in consideration of her kindness, untiring devotion and personal service to me during my illness when no other relative offered or came to do for me, and without hope of reward * * *."

Summary of the Argument.

Every element of undue influence and fraud was shown, not only by a preponderance of the evidence but beyond a reasonable doubt.

I.

Undue Influence and Fraud.

While it is true as appellant contends, that a mere possibility or suspicion is not sufficient to set a will aside on the grounds of undue influence neither is it necessary that there be direct proof of fraud or undue influence. Undue influence is nearly always a matter of inference. *Duckett v. Duckett, supra*, citing *Hagerty v. Olmstead*, 39 App. D. C. 70, 175; *Barbour v. Moore*, 10 App. D. C. 30, 46.

There was more than a mere possibility or suspicion of undue influence and fraud in this case, there were improper means and practices, there was an imposition and fraud exercised upon the testatrix.

The tactics used were not only unfair but dishonest and stooped to such a degree where the will of the testatrix was subjugated to such pressure. The conduct was improper according to all commonly accepted standards—normal standards of normal men. This was certainly fraud and undue influence.

ARGUMENT.

I.

Every element of undue influence and fraud was shown, not only by a preponderance of evidence but beyond a reasonable doubt. The argument will be divided into two parts, the first "Undue influence," the second "Fraud."

1. *Undue influence:*

The Supreme Court says in *Mackall v. Mackall*, 135 U. S. 167, 34 L. ed. 84:

"Undue influence must destroy free agency. It is well settled that in order to avoid a will on the ground of undue influence, it must appear that the testator's free agency was destroyed, and that his will was overborn by excess importunity, imposition or fraud, as that the will does not, in fact, express his wishes as to the disposition of his property, but those of the persons exercising the influence."

Undue influence is the imposition of an external force of some character which results in setting aside the testator's own will or volition. This external force has to be wrongful, and it has to result in the breakdown of the testator's own normal mental processes so that what the testator does is not actually the exercise of the testator's will, but the testator, in other words, becomes a puppet, performing by virtue of the imposition of the external pressure. This external pressure, producing a breakdown of the testator's mental powers sufficiently to make it undue influence, results from various things:

- (a) Actual physical force or forcible restraint—then it is called duress.
- (b) Threats, imprecations, inducing in the testator a state of fear, dread, nervousness until the testator lacks a mind of his own—then it is called coercion or menace.

- (c) Lies, misrepresentations either open or subtle, or sudden or systematically conducted (but resulting in the subjugation of the will and the normal purposes of the testator)—then it is called fraud.

There is abundance of evidence in this case showing testatrix herein was subjected to the latter form of external pressure.

In *Conley v. Nailer*, 118 U. S. 127, 30 L. ed 112, the Supreme Court states:

“The ground upon which courts of equity grant relief in such cases is that one party, by improper means and practices, has gained an unconscionable advantage over another.”

The evidence in this case proves that Maud Duckett did, by improper means and practices, gain an unconscionable advantage over the testatrix herein.

In re Link's Will (1930), 202 Wis. 1; 231 N. W. 177, and the cases therein cited, clearly set forth the element of undue influence:

- (a) the opportunity for exercising undue influence,
- (b) the result indicating the exercise of undue influence,
- (c) an easy subject for undue influence,
- (d) the disposition to exercise undue influence.
 - (a) the sole beneficiary's act in taking the testatrix home from the hospital against the advice of the doctors, where she could have complete charge over her; her persistent and availing efforts to keep others away from her and converse with her.
 - (b) the sudden cutting off of all other relatives and particularly Ward; the false statement in the will that none of the other relatives offered or came to do for her, exactly contrary to the evidence in this case.
 - (c) the age, sickness and weakened condition both physically and mentally of testatrix; the will

written on the death bed and under unusual circumstances just the day before testatrix died.

- (d) the inference is that although Maud says she came to look after her sister, she came as a fortune hunter; she immediately began taking charge of her; her whole conduct showed an undoubted campaign to secure for herself the estate of this aged and sick woman; the further inference is that she must have impressed upon testatrix that the other members of the family didn't want to do for her; the will drawn while all other members of the family were away from the house and the failure to even acquaint them with the drawing of a will until after the burial of testatrix.

In *Barbour v. Moore*, 4 App. D. C. 535 this Court said:

"Any degree of importunity or undue influence which deprives him of his free agency and which is such that he is too weak to resist, will invalidate a will."

The free will of testatrix in the case now before this Court was certainly lacking.

In *Hagerty v. Olmstead*, 39 App. D. C. 170 this Court said:

"General evidence of power exercised over a testator, especially if he be a weak mind from age or bodily infirmity, though not to such an extent as to destroy testamentary capacity, is enough to raise a presumption of undue influence, which ought to be met and overcome before such a will can be established, and particularly so when the party to be benefited stands in a confidential relation to the testator."

This Court said in *Barbour v. Moore*, 10 App. D. C. 30; *Towson v. Moore*, 11 App. D. C. 377:

"Undue influence is a subtle influence, difficult to be proved or disproved; it is nearly always proved by a series of circumstances and inferences from facts disclosed by the evidence of the conditions and surroundings of the parties. It is seldom possible and never necessary to prove it by witnesses who have actually seen it exercised in the matter in controversy."

2. *Fraud:*

Fraud has been defined by all text-books as a false representation of facts, made with knowledge of its falsehood, or in reckless disregard whether it is true or false, with the intention that it shall be acted upon by the other party, and actually inducing him to act upon it to his injury.

Fraud is really a trick, secret device, false statement, or pretense, by which the subject of it is cheated. It is any intrigue or secret plot.

Fraud generally includes misrepresentation. Therefore, mere nondisclosure of facts does not, as a rule, amount to fraud. If nondisclosure is coupled with an active attempt to deceive, however, such a suppression of facts as makes it convey an erroneous impression, or by the taking of means to prevent the other party from learning a material fact, it is termed "concealment," and this constitutes fraud. Under such circumstances, the law imposes an obligation upon a person to disclose all material facts known to him, and not known to the other party. In such case, nondisclosure amounts to fraud.

When one allows another party to proceed on an erroneous belief to which one's acts have contributed, it is concealment and amounts to fraud.

Fraud is always veiled in mystery—while it is never to be presumed it is not necessary to show it by any direct or positive testimony—it can be detected and brought to light by circumstances.

In *Hagerty v. Olmstead*, 39 App. D. C. 170 this Court said:

"It is not necessary that there be direct proof of fraud or undue influence in the execution of a will; but if it appears that confidential relations existed between testatrix and the principal beneficiary under the will, it is for the jury to infer from all the evidence before it whether or not the execution of the will was the result of improper inducement or fraud."

Maud Duckett was in complete charge of the testatrix from the time she was brought home from the hospital until the moment of her death. This is the undisputed testimony in this case. Other relatives were not permitted by Maud, all during this time, to see or converse with the testatrix. All members of the family did, however, make many visits to the house to see the testatrix and several stayed there all the time doing the household duties but never being allowed in the sick-room. The language of the will is "no other relative offered or came to do for me." This is contrary to the evidence in the case. Where did the testatrix gain the information that none of the other relatives offered or came to do for her. It must have come through the false representations of Maud made to the testatrix. There could be no clearer inference. These statements misled the testatrix and were made for the purpose of misleading her. On the other hand, if Maud did not disclose the true fact to the testatrix that other members of the family were doing for her and that all were calling often to see her then Maud was concealing material facts from her and thus creating erroneous impressions on her and that was equally as bad as the false representations.

Maud had falsely assumed a particular character, as being the helping-hand, while on the other hand, she was keeping others away from testatrix by telling them she was acting under orders of the doctors and she would lose her license if she permitted them to see the testatrix and all the while either telling the testatrix a falsehood or keeping from her the real truth in the matter.

Maud was slandering others for what purpose—to induce the terms of the will. Testatrix was by such false statements or the concealment of the truth induced to disinherit other members of the family and thus make Maud the sole beneficiary. This was certainly fraud, the grossest kind of fraud upon a weak and exhausted old woman. Maud Duc-

kett had poisoned the mind of the testatrix to a belief that the disinherited brothers, sisters, nephews and nieces cared no more for Aunt Mary and had abandoned her in her hour of death.

There certainly was an intent on Maud's part that testatrix would act upon such false representations or concealment and it will be assumed from all the circumstances surrounding this case that she did so act.

The law as laid down in *Tyler v. Gardiner*, 35 N. Y. 559; *Lyon v. Dade*, 111 Mich., 340; *Hildreth v. Marshall*, 51 N. Y. Eq. 241; 27 Atl. 465 is to the effect:

If it is shown by the evidence that for any reason the testatrix was unable to read the will, or if she was old or infirm, or for any reason liable to be imposed upon, and especially if the dispositions are disproportionate in favor of one in a position enabling her to deceive the testatrix, these facts alone will often be held sufficient to make out a case of fraud unless clearly explained.

It appears from the above that there was more than sufficient evidence, taking all the circumstances of this case into consideration, for the jury to find in favor of the appellees herein.

Conclusion.

The lower Court together with the jury having seen and heard the witnesses and thus having the opportunity to observe their manner and demeanor and the Court both at the conclusion of appellees' case and again at the close of appellant's case having overruled a motion for a directed verdict and the jury having decided a question of fact based on the evidence certainly this Court will not disturb the Trial Court's determination of a question of fact unless the verdict is clearly unsupportable by the testimony.

It is clear that there was undue influence and fraud practiced by a party directly in interest.

It is, therefore, respectfully submitted that the judgment of the Court below be affirmed.

Respectfully submitted,

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Additional Appendix for Appellees.
Case No. 8782.

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Additional Appendix for Appellees.**Case No. 8782.**

Caveator's Witness, Ward C. Duckett, Re-direct:

(Additional Re-direct Examination by Mr. Murphy to follow Joint Appendix at Page 32, Paragraph 97.)

(70) Q. Were there any other folks around the house besides you and Maud who looked after her? A. My sister-in-law.

Q. Who is that? A. Mrs. Janie Duckett.

Q. Did she stay around the house very often? A. She was there every day.

Q. What did she do? A. Cooking, washing, cleaning up. She kept the house clean. When she was not there my oldest sister was there.

Q. Who is your oldest sister? A. Mrs. Stewart.

Q. She spent some time taking care of the house? A. Yes, she was there when my sister was taken to the hospital.

(71) Q. Anyone else? A. Another lady named Blanche Hawkins, she came there every day.

Q. Did Maud have anything to do with looking after the house other than just taking care of Mary? A. I don't think she did. I didn't see her.

Mr. Dodson: Then I object to it. It is very apparent from his answer that—he cannot testify to what he didn't see.

Mr. Murphy: Well, I think the answer is not responsive.

The Court: Well, answer only what you know. Go ahead.

By Mr. Murphy:

Q. The question was, Ward, did Maud do anything around the house other than take care of your sister, Mary? A. No, she didn't.

Q. Who did the cooking? A. Mrs. Janie Duckett and Mrs. Mary Agnes Stewart. Them two.

Q. Going back to the hospital, Ward, when Mary was taken away from the hospital, did you have anything to do with having her taken out of the hospital? A. No, I didn't.

Q. Who did? A. Maud and Mrs. Walker.

Q. Were you present? A. I didn't go to the hospital that day, but I took them down to the hospital. I didn't go into the office where they had to write her up. I took them down there and stood in the hall, but they had to go in the office. I didn't go in the office.

(72) Q. You didn't ask the doctor or anyone else in the hospital whether or not you could take Mary away, whether you could take her home? A. Well, when she was standing in the hall Maud said she was a trained nurse and she could take care of her. The doctor said he had booked her to go to Glendale. Maud said, "I want my sister to go home." He said, "Well, it will be on your hands. She ain't fit to be cared for at home unless she is cared for by a doctor." I didn't say anything.

* * * * *

Caveator's Witness, Janie Duckett, Cross:

(Additional Cross Examination by Mr. Dodson to follow Joint Appendix at Page 38, Paragraph 112 after fourth line.)

(79) Q. Did you ever go to the door and look in at her? A. I didn't go in there at all.

Q. Did you ever go upstairs? A. Yes, sir. I went upstairs, but she was back on the back porch.

Q. You didn't bring her food up to her? A. No, sir. The nurse did that.

Q. Did you clean her room? A. No, sir. The nurse did that. I didn't clean her room.

Q. You don't know what kind of care Mrs. Diggs

actually received there at all? A. No, sir, because I didn't go in there or nothing.

Q. During that week you were there, the last week of her life, many of her relatives came to see her. A. None of them ever went upstairs to see her. They came and asked about her.

(80) Q. None of her relatives went upstairs to see her? A. Not while I was there.

Q. And you were there from 8 o'clock in the morning until 11 o'clock at night and not a single relative saw her? A. Yes, sir.

* * * * *

(81) Q. Do you know why they didn't go upstairs? A. Because they said she could not be seen.

(Further Cross Examination by Mr. Dodson to follow Joint Appendix at Page 39, Paragraph 116.)

(84) Q. How do you happen to remember that? A. Well, I think she found out that her cousin was real sick that morning, and that is the reason she came early.

The Court: He said what is there about it that makes you remember it?

A. Because she was real sick that morning. She came early and then she had to go away again, you see.

By Mr. Dodson:

Q. Why does that stand out in your mind rather than any of the other mornings? She was sick the whole week, wasn't she? A. She was sick the whole week, but that morning she was worse.

Q. What time did Cecelia Walker get there on the day of her death? A. She was not there as early as she was Friday morning, because she had to go away Friday morning.

Q. You were there for a whole week from Saturday to Saturday? A. Yes.

Q. Can you remember any other day during that week at what time Mrs. Cecelia Walker got there? A. I told you she always came in the morning, but I know that Friday morning she came earlier.

* * * * *

(85) RE-DIRECT EXAMINATION:

By Mr. Murphy:

Q. What was the relationship between the various members of the family, and your sister Mary? Were they all very friendly? A. Yes, sir. I think they were friendly. I never heard no different.

Q. Did the different sisters and brothers visit Mary very often during her lifetime? A. They all live away from here, but those that lived close always did it, and the rest lived so far from here.

(86) Q. How about Maud? Did she visit her very often? A. No, sir.

Q. Where did Maud live? A. I don't know where she lived, but she didn't come often.

Q. You say there was quite a number of kinfolks that came to see her during her last week of illness, but they merely came to the house and inquired about her and did not go up to see her. A. No, sir, they didn't go up to see her.

Q. Do you know why they didn't go up to see her? A. I thought it was because she was so sick.

Q. Did you ever hear Maud tell any of them they couldn't go to see her? A. Yes, sir. She told a lot of them they couldn't go up to see her because it might make her lose her license, and job as a nurse, you see. That is why she told them that they couldn't go up to see her.

Mr. Murphy: That is all.

* * * * *

Caveator's Witness, Janie Brown, Cross:

(Additional Cross Examination by Mr. Dodson to follow Joint Appendix at Page 51, Paragraph 153.)

(119) Q. Now, at the home, when you saw her, would you go upstairs to see her? A. Before she went to the hospital?

Q. After she came home from the hospital? A. I didn't see her.

Q. You didn't see her, A. No, I didn't.

Q. You were at the house every day? A. I was there every night, but I didn't see her.

Q. Did you ever go and try to see her? A. I went in the front room upstairs, but she was not in that room.

Q. Did you ever go to the door and look at her? A. No.

Q. Were you ever told point blank you couldn't see her? A. Yes, my aunt told me I couldn't see her.

Q. Did she tell you you could only see her for five or ten minutes? A. She told me I couldn't see her at all.

Q. Did you make any objection to that? A. No, I didn't.

Q. It seemed perfectly reasonable to you? A. Because I took her word. She was a nurse. She told me she would lose her license if I went in there, and I didn't go in there.

(120) Q. You were satisfied with that explanation? A. I took her word because she was older than I was.

Q. I say you were satisfied at that time? A. Yes.

Q. You didn't press it any further? A. No, I didn't.

Mr. Dodson: That is all.

* * * * *

Caveator's Witness, William R. Duckett, Direct:

(Further Direct Examination by Mr. Murphy to follow Joint Appendix at Page 52, Paragraph 155.)

(122) Q. Did you hear Maud tell any other members of the family or outsiders that they couldn't see her?

A. I did.

Q. Whom did you hear her tell that to? A. Aunt Mamie Matthews. I heard her tell Aunt Mamie Matthews that.

Caveator's Witness, Eleanor Middleton, Re-direct:

(To follow Joint Appendix at Page 56, Paragraph 167.)

By Mr. Murphy:

(148) Q. When was the first time you learned that your aunt had made a will? A. The first time that I knew my aunt had made a will was after the funeral. We came back to the house and Cecelia Walker called us all together and said all that wanted to hear the will read, the will would be read at 1 o'clock and all that didn't want to hear it read could go.

Q. Did you go back to the house at 1 o'clock. A. I was still there at the house and I stayed there.

Q. Was the will read at 1 o'clock? A. It was.

Q. By whom? A. Mr. Gray.

Q. Mr. Gray was there and read the will at 1 o'clock? A. Yes, he was.

Caveator's Witness, Dr. Charles P. Cake, Direct:

By Mr. Murphy:

(149) Q. Will you please state your name, Doctor? A. Charles P. Cake.

Q. Are you attached to Gallinger Hospital? A. Yes.

Q. You are here in response to a subpoena *duces tecum*

to bring with you the records of Mary Frances Diggs?

A. That is right.

Q. Do you have the chart and records? A. I do not have the chart.

Q. Do you have any records with you? A. I have a card with a brief record on it.

Q. Now, Doctor, referring to that record, will you give us the date of admission and the date of discharge from the hospital of Mary Frances Diggs? A. She was admitted March 27, 1941 and discharged April 12, 1941.

Q. Now, Doctor, while at the hospital did you at any time come in contact with the sister of Mary Frances Diggs that is Maud Duckett? A. I don't know her name, but I came in contact with a sister who said she was a nurse from Philadelphia.

Q. Did she ask at any time or request the release of her sister Mary from the Hospital? A. Yes, she saw me (150) and said she was a nurse and could look after her sister at home, and preferred to have her at home.

Q. Did anyone ask for her release from the hospital other than Maud Duckett? A. No, she was the only one.

Q. Did you advise against her leaving the hospital?

Mr. Dodson: I object to that as leading.

Mr. Murphy: Well, if he didn't, he can say he didn't.

The Court: Well, the same thing can come about by asking him what he advised with respect to her.

Mr. Murphy: I will withdraw the question, your Honor.

By Mr. Murphy:

Q. Doctor, did you have any conversation with Maud Duckett? A. Yes. When she came to me she asked for her sister's release from the hospital and said she was a nurse and could look after her at home. I told her I

didn't believe she should leave the hospital. She was quite ill. But she insisted and she signed out on her own responsibility.

Mr. Murphy: That is all.

CROSS EXAMINATION:

By Mr. Dodson:

Q. Doctor, did you wait on the patient Mary Frances Diggs in the hospital? A. Yes.

Q. She, herself, wanted to go home? A. Not that I know of, she never mentioned it herself. Her sister is the only one that talked to me about her.

(151) Q. When her sister was talking to you about that, who else was present? A. I think there was just the two of us.

Q. As a matter of fact, wasn't her sister there and another lady and a brother? A. I don't recall those details.

Q. Sir? A. I don't recall talking to anyone but the sister.

Q. You might have talked to the sister, but was there anyone else there, too? A. I don't recall that there was anybody there but the sister.

Q. Did you give her certain advice as to how she should care for Mrs. Diggs? A. She stated she was a nurse and knew how to protect herself and others and was well able to take care of her sister at home.

Q. Did you give her any advice as to how she should—
A. My advice to her was that she should not remove her from the hospital at all.

Q. That is the only advice you gave her? A. Yes.

Mr. Dodson: That is all.

RE-DIRECT EXAMINATION:

By Mr. Murphy:

Q. What is your position at Gallinger Hospital? A. Medical Director of the Tuberculosis Division.

Q. How long have you been connected with the hospital?

A. Since September, 1934.

(152) Q. How long have you been a doctor? A. Since 1925.

Mr. Murphy: That is all, thank you.

Caveator's Witness, Dr. John C. Sullivan, Direct.

By Mr. Murphy:

Q. Will you give your full name? A. John C. Sullivan.

Q. You are a practicing physician in the City of Washington, or were up until the time you entered the Army?

A. That is correct.

Q. Did you have an occasion to attend one Mary Frances Diggs? A. I did.

Q. Were you in attendance upon her when she was sent to Gallinger Hospital? A. Yes.

153 Q. Was it upon your orders and directions she was sent to Gallinger Hospital? A. That is correct.

Q. Did you see her sister, Maud Duckett, at any time while you were at Gallinger Hospital? A. Yes, she was there.

Q. Did she request from you at any time the release of her sister Mary from the hospital? A. She asked me if she could be released and I told her it was up to the Gallinger Hospital authorities.

Q. Did you have any other conversation with her? A. No, just an ordinary conversation about how Mrs. Mary Diggs was doing. She was in the room with her frequently.

Q. Did you call at the home of Mrs. Diggs after she was brought home from the hospital? A. Yes.

Q. Did you have any conversation with her sister Maud then? A. Yes, we talked there about the condition of the patient.

Q. Did you at any time say anything to Maud about bringing her home from the hospital? A. I told her I

thought it better that she stay in the hospital instead of coming home.

Q. Instead of coming home? A. Yes.

* * * * *

(154) Q. Did you at any time during that time advise her sister Maud that she was not to have any visitors? A. No.

Q. Did you at any time tell her if she permitted any visitors or members of the family, if they saw her sister Mary, that she would lose her license as a nurse? A. No, I never said that.

Caveator's Witness, Minnie Gant, Direct.

By Mr. Murphy:

(157) Q. What is your full name? A. Minnie Gant.

Q. Where do you live? A. 119 16th Street, Southeast.

Q. Are you related in any way to Mary Frances Diggs? A. Yes.

Q. In what way? A. I am her sister-in-law.

Q. Did you visit her at any time while she was in Galinger Hospital? A. Yes, I visited her twice.

Q. What was her condition when you saw her? A. The first time I saw her she was kind of peart, but when I went there the last time to see her she didn't know me at all. She was just kind of lying down in kind of a slumber like. Then I looked at her and talked to her, I asked her if she knew me. She didn't say a word. She just looked at me with eyes half-closed. Then I put my hand on her (158) hand, and she put her head down like this (indicating). She never said another word to me after that.

Q. Did you go to her home to see her after she left the hospital? A. I did.

Q. Did you see her? A. I did not. Maud said the doctor told her he would take her license from her if she let anyone see her.

Mr. Murphy: That is all.

CROSS EXAMINATION:

By Mr. Dodson:

Q. When did you see her in the hospital? A. I don't remember the date, but it was on a visiting day, on a Wednesday.

Q. With reference to the time she went in the hospital on March 23, 1941. A. I don't know exactly. It was in March when I seen her.

* * * * *

(162) Q. So, you had no conversation with her? A. I didn't, because she couldn't talk to me.

Q. How long did you spend with her on that occasion? A. Five or ten minutes.

Q. Now, when she was taken home, did you ever go to the house to see her? A. I did.

Q. How many times? A. I went there once to see her and I couldn't see her because Maud—at least I didn't see her—because Maud told me if she let me in to see her, her license would be taken away from her—that is what the doctor told her. The doctor told her that.

* * * * *

(164) RE-DIRECT EXAMINATION:

By Mr. Murphy:

Q. Mrs. Gant, you were friendly with Mary during her life time? A. I always was.

Q. Did you visit her very often? A. I certainly did.

Q. She knew you well? A. She certainly did. She loved me. She certainly did.

Mr. Murphy: That is all.

* * * * *

Caveator's Witness, Ward Duckett, Further Direct:

By Mr. Murphy:

(165) Q. Ward, when was the first time that you learned your sister had made a will? A. The day of the funeral, after we had come back from the funeral.

(166) Q. After you had come back where from the funeral? A. Back to the house.

Q. What were the conditions under which you learned about it? A. Mrs. Walker walked into the house and said to all the family that was there that the lawyer would be there at 1 o'clock to read the will and all those who wanted to hear it can stay and those who didn't want to hear it can go.

Q. Did the lawyer come there at 1 o'clock to read the will? A. He was there at 1 o'clock.

Mr. Murphy: That is all.

Caveatee's Witness, Reverend Louis Gerard Troach, Cross.

(To follow Joint Appendix at Page 92, Paragraph 274.)

By Mr. Murphy:

(238) Q. Did you do most of the talking? A. I did.

Q. You did? A. Oh, yes, because she answered in monosyllables as I remember.

Q. She answered in monosyllables? A. Yes.

Q. From your observation in the sickroom, and talking to her, would you say she was capable at that time of executing a valid deed or contract? I mean by that, was she capable of carrying on her business affairs and talking business and looking after her business? A. You see, there again, that would not occur to me.

Q. You wouldn't say she was? A. I couldn't say that she was or that she was not.

Q. Do you recall at this time whether or not you anointed Mary? A. Oh, I did anoint her.

(239) Q. When was that? A. That might have been before the day of her death.

Q. It might have been before the day of her death? A. Yes, because I knew she was very sick. I don't know how

long before, but I know I saw her before the day of her death, and that I annointed her then.

Q. Father, will you explain to the jurymen what you mean by annointing her?

Mr. Dodson: I object to that, if your Honor please.

The Court: What is the objection?

Mr. Dodson: May we approach the bench?

The Court: Yes.

(Counsel for both sides approached the bench and conferred with the Court in a low tone of voice, as follows):

Mr. Dodson: I cannot see what purpose that is going to have in these issues. What difference does that make in this case?

The Court: Well, you put him on to testify as to what observations he made of her, and he did certain things. I don't think it is objectionable to say what he means by what he did.

Mr. Murphy: You asked the question—

Mr. Dodson: I never asked him anything about annointing. It has a particular significance in the Catholic Church when they give this last supreme sacrament. It has a particular meaning to every Catholic as Mr. Murphy well knows.

The Court: I assumed it did without knowing.

Mr. Dodson: It is harmful and prejudicial in this particular case.

(240) The Court: Why?

Mr. Dodson: Because this man is not a doctor. He gives his view on it.

The Court: Oh, well, of course. I will let him answer the question.

Mr. Dodson: I will take an exception.

(At the conclusion of the foregoing conference, counsel returned to the trial table, and the trial proceeded as follows):

By Mr. Murphy:

Q. Your answer was you did annoint her. Now I ask you to explain what you mean by that. A. You don't want me to go into the theology?

Q. No, I don't.

The Court: No, Father, just briefly, what did you signify by that term? What does it mean?

The Witness: The recitation of certain prayers and the touching with oil of the eyes, ears, nose, hands, and feet.

By Mr. Murphy:

Q. That is sufficient, Father. I merely want to ask you is that a sacrament in the Catholic Church? A. It is one of the seven, yes, sir.

Q. When is that sacrament usually administered? A. In time of danger of death from a wound or otherwise.

Q. When, in the mind of the priest, you mean, the person is in danger of death. A. That is right, to the best of our poor judgment.

Mr. Murphy: Thank you, Father.

(241) RE-DIRECT EXAMINATION:

By Mr. Dodson:

Q. You were exercising your poor judgment on that occasion? A. It could have been poor. She appeared very sick, and that is enough for us to go ahead with the sacrament of extreme unction. She appeared to be in danger of death.
